

*United States Court of Appeals
for the Second Circuit*



APPENDIX

B
BDS

Docket No. 75-1201

IN THE
United States Court of Appeals
For the Second Circuit

UNITED STATES OF AMERICA,

Appellant.

—v—

FRANK S. CANNONE, STANLEY A. RAPPUCCI,
THOMAS A. GAETANI, JON N. ENGLISH, JOSEPH
N. MARUCA, VINCENT N. CHRISTINA, ANTHONY
R. SANTACROSE, JR., RAYMOND D.
MASCIARELLI, JAMES W. McGRATH, ANDREW J.
QUINLAN and THOMAS A. ABBADESSA,

Appellees.

—and—

UNITED STATES OF AMERICA,

Appellant.

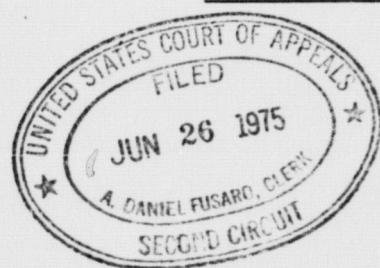
—v—

RAYMOND D. MASCIARELLI and LAWRENCE
SCHULTZ,

Appellees.

On appeal from the United States District Court
Northern District of New York

APPENDIX FOR APPELLANT,
United States of America



JAMES M. SULLIVAN, JR.
United States Attorney
Northern District of New York

EUGENE WELCH
Assistant United States Attorney
Federal Building
Syracuse, New York 13201
(315) 473-6660

Attorneys for Appellant.

PAGINATION AS IN ORIGINAL COPY

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Indictment #74-CR-142.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA)	Criminal No. 74-CR- <u>142</u>
v.)	
FRANK S. CANNONE, STANLEY A. RAPPUCCI,)	INDICTMENT Vio: 18 USC 2, 371, 1503, 1955.
THOMAS A. GAETANI, JON N. ENGLISH,)	
JOSEPH N. MARUCA, VINCENT N. CHRISTINA,)	
ANTHONY R. SANTACROSE, JR.,)	
RAYMOND D. MASIARELLI, JAMES W. McGRATH,)	
ANDREW J. QUINLAN and THOMAS J. ABBADESSA.		

COUNT I

THE GRAND JURY CHARGES:

From about January, 1974 and continuously thereafter up to and including the 17th day of June, 1974, in the Northern District of New York and elsewhere, FRANK S. CANNONE, STANLEY A. RAPPUCCI, THOMAS A. GAETANI, JON N. ENGLISH, JOSEPH N. MARUCA, ANTHONY R. SANTACROSE, JR., RAYMOND D. MASIARELLI, JAMES W. McGRATH, ANDREW J. QUINLAN, THOMAS J. ABBADESSA and others, unlawfully, wilfully and knowingly did conduct, finance, manage, supervise, direct and own a part of an illegal gambling business, said illegal gambling business involving book-making, that is the giving and accepting of line information, wagers and lay-off on sports events and horse races, in violation of the laws of the State of New York (New York Penal Law, Section 225.00 and following) in which said business was conducted; said illegal gambling business involved, during the period aforesaid, more than five persons including those named herein and others not named herein, whose identities are known to the Grand Jury and others not named herein whose identities are unknown to the Grand Jury who conducted, financed, managed, supervised, directed and owned a part thereof and said illegal gambling business remained in substantially continuous operation for a period in excess of thirty days and had a gross revenue of \$2,000.00 in a single day;

All in violation of Title 18, United States Code, Sections 2 and 1955.

COUNT II

THE GRAND JURY FURTHER CHARGES:

From about January, 1974 and continuously thereafter up to and including the 17th day of June, 1974, in the Northern District of New York

Indictment #74-CR-142.

and elsewhere, FRANK S. CANNONE, STANLEY A. RAPPUCCI, THOMAS A. GAETANI, JON N. ENGLISH, JOSEPH N. MARUCA, ANTHONY R. SANTACROSE, JR., RAYMOND D. MASCIARELLI, JAMES W. McGRATH, ANDREW J. QUINLAN, and THOMAS J. ABBADESSA, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together with each other and with ANGELO A. BONTEMPO, DONALD GARREN, EUGENE D. SCHIAPPA, CARMEN DeLANZO, ROGER EVANEK, and JOYCE EVANEK, named as co-conspirators but not as defendants herein and with diverse other persons to the Grand Jury unknown to commit the following offense against the United States:

to unlawfully, wilfully and knowingly conduct, finance, manage, supervise, direct and own a part of an illegal gambling business as set forth in Count I herein, that is an illegal book-making business in violation of the laws of the State of New York in which said business was conducted and involving more than five persons who conducted, financed, managed, supervised, directed and owned part of said business which illegal gambling business remained in substantially continuous operation for a period in excess of thirty days, and had a gross revenue of \$2,000.00 in a single day, in violation of Title 18, United States Code, Section 1955.

OVERT ACT

In furtherance of the conspiracy and to effect the objects thereof, the defendants and co-conspirators performed the following overt act:

1. On or about the 8th day of March, 1974, in the Northern District of New York THOMAS A. GAETANI and STANLEY A. RAPPUCCI spoke with each other by telephone, and in that conversation discussed their bookmaking business;

ALL in violation of Title 18, United States Code, Section 371.

COUNT III

THE GRAND JURY FURTHER CHARGES:

On or about the 24th day of October, 1974, in the Northern District of New York, JOSEPH N. MARUCA and VINCENT N. CHRISTINA unlawfully, wilfully and knowingly, corruptly and by force did endeavor to influence, intimidate and impede Angelo A. Bontempo, a witness who had been subpoenaed and who had

Indictment #74-CR-142.

testified on October 23, 1974 before a Grand Jury then empaneled in and for the United States District Court for the Northern District of New York which Grand Jury was then investigating alleged violations of the United States Code concerning illegal gambling business;

that is JOSEPH N. MARUCA and VINCENT N. CHRISTINA by beating Angelo A. Bontempo with their fists did injure the person of Angelo A. Bontempo on account of his having attended and testified before said United States Grand Jury and did thereby corruptly endeavor to influence, obstruct and impede the due administration of justice;

In violation of Title 18, United States Code, Sections 2 and 1503.

A TRUE BILL

Al Richard Nichols
FOREMAN OF THE GRAND JURY

Al Thomas M. Sullivan Jr.
UNITED STATES ATTORNEY

Indictment #74-CR-144.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA) Criminal No. 74-CR-144
'v.) I N D I C T M E N T
RAYMOND D. MASCIARELLI,) Vio: 18 USC 2 and 1084(a)
LAWRENCE SCHULTZ)

COUNT I

THE GRAND JURY CHARGES:

From on or about the 12th day of April, 1974 to on or about the 24th day of April, 1974, in the Northern District of New York and elsewhere as set forth herein, RAYMOND D. MASCIARELLI being engaged in the business of betting and wagering, and LAWRENCE SCHULTZ unlawfully, wilfully and knowingly did use and did cause to be used wire communication facilities, that is the telephone, for transmission in interstate commerce between Munroe Falls, Ohio and Binghamton, New York of information assisting in the placing of bets and wagers on sporting events and contests;

In violation of Title 18, United States Code, Sections 2 and 1084(a).

A TRUE BILL

W. Richard Nichols
FOREMAN OF THE GRAND JURY

Asst. United States Attorney
UNITED STATES ATTORNEY

Transcript of Arraignments on 12-10-74.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----x
:
UNITED STATES OF AMERICA,

:
- against -

:
FRANK S. CANNONE, STANLEY A. RAPPUCCI,
THOMAS A. GAETANI, JON N. ENGLISH, :
JOSEPH N. MARUCA, VINCENT N. CHRISTINA,
ANTHONY R. SANTACROSE, Jr., RAYMOND :
D. MASIARELLI, JAMES W. McGRATH,
ANDREW J. QUINLAN and THOMAS J. :
ABADESSA,

74-Cr-142

:
Defendants.

-----x

Arraignments in the above-entitled matter
were held pursuant to notice at the United States
District Court in and for the Northern District
of New York, at Auburn, N. Y., on December 10,
1974, at ten o'clock a.m. before HON. EDMUND
PORT, United States District Judge.

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Transcript of Arraignments on 12-10-74.

2.

A P P E A R A N C E S:

HON. JAMES M. SULLIVAN, Jr., United States
Attorney for the Northern District of New York,
Federal Building, Syracuse, New York, By: EUGENE
WELCH, ESQ., Assistant U. S. Attorney, appearing in
behalf of the United States;

- and -

REMO A. ALLIO, ESQ., Attorney and Counsellor at
Law, 19 Washington Ave., Endicott, N.Y. 13760, appear-
ing in behalf of Defendants Cannone, Gaetini, English,
Christina, Santacrose, Jr. and Abbadessa; and

DANTE M. SCACCIA, ESQ., Attorney and Counsellor at
Law, 300 Wilson Building, Syracuse, New York, appear-
ing in behalf of Defendants Masciarelli and McGrath, and

HAROLD BOREANAZ, ESQ., Attorney and Counsellor at
Law, 736 Brisbane Bldg., Buffalo, N.Y. 14203, appearing
in behalf of Defendants Rappucci and Maruca; and

MICHAEL J. DESISTI, ESQ., Attorney and Counsellor
at Law, 101 Hayden Street, Sayre, Pennsylvania, appear-
ing in behalf of Defendant Quinlan.

- - - -

THE COURT: All right. Call the next one.

THE CLERK: United States of America against
Frank S. Cannone, Stanley A. Rappucci, Thomas A.
Gaetani, Jon N. English, Joseph N. Maruca, Vincent

Transcript of Arraignments on 12-10-74.

3.

N. Christina, Anthony R. Santacrose, Jr., Raymond D. Masciarelli, James W. McGrath, Andrew J. Quinlan and Thomas J. Abbadessa, 74-Cr-142.

MR. WELCH: If Your Honor please, the gentlemen just named by the Clerk appear for arraignment after being indicted by a Syracuse grand jury on 3 counts. All but Mr. Christina were indicted for conducting an illegal gambling business. Mr. Maruca and Mr. Christina are indicted on a separate count for beating a grand jury witness. We move the arraignment of the defendants.

THE COURT: Arraign the defendants.

MR. WELCH: Your Honor, I have received word from Mr. Scaccia that he appears on behalf of Mr. Masciarelli and Mr. McGrath. We might want to sort out counsel.

MR. SCACCIA: McGrath and Masciarelli are represented by Mr. Dante Scaccia. May the record show I received copies of the indictment and I waive the reading.

THE COURT: All right.

MR. ALLIO: May it please the Court, my name is Remo A. Allio and for purposes of arraignment I represent Mr. Cannone, Mr. Gaetani, also Mr. Jon English, Mr. Vincent Christina, Mr. Anthony Santacrose and Mr. Thomas Abbadessa.

THE COURT: All right. I am addressing myself to Mr. Cannone -- is that the way you pronounce it?

MR. ALLIO: That is substantially correct.

THE COURT: How would it be correct?

MR. ALLIO: They are known as Can-none.

THE COURT: Who is he?

MR. ALLIO: The first one. Cannone.

THE COURT: Mr. Cannone, Mr. Gaetani, Mr. English
Mr. Christina and Mr. Abbadessa.

MR. ALLIO: And Mr. Santacrose.

THE COURT: And Mr. Santacrose. You gentlemen all understand that you are being represented here by Mr. Allio? Do you understand that?

(Defendants Cannone, Gaetani, English, Christina, Santacrose and Abbadessa indicate in the affirmative.)

THE COURT: Is that what you want? You want to be represented by the same lawyer?

(Defendants all reply "That is correct".)

MR. ALLIO: This, of course, Your Honor, is for the purpose of arraignment. I do have a motion to make for one of the gentlemen here.

THE COURT: Let's finish with this first. I will hear your motion. I just want to make sure that we understand each other. You are all represented by Mr. Allio and I am asking if you want him to repre-

sent you, that there is no conflict of interest amongst you. If there is I want to know it now.

DEFT. CANNONE: I would like to leave it the way it is.

MR. ALLIO: They understand it.

THE COURT: You always understand. Then you come and say "I have not had a chance to get a lawyer." I will give you every opportunity to get a lawyer. But as I understand it, you conceive of no interest that may be adverse to any other?

MR. ALLIO: We have a conspiracy case but at this time I see no reason why they should have a different attorney.

THE COURT: You ought to know that. Have you talked to these men?

MR. ALLIO: I have talked to each of them.

THE COURT: Does it appear that there is any improprietary in your service as counsel for all?

MR. ALLIO: No improprietary. However it is not good tactics. This is a conspiracy case.

THE COURT: If it is not good tactics then I say there is some improprietary. You are under the obligation to represent these men properly, to see that they come into court with their best foot forward.

MR. ALLIO: I did mention that for the purpose of

the arraignment I am representing all of these gentlemen. Certainly they are going to make, and have made certain other arrangements with other counsel. We have discussed that in depth.

THE COURT: I want Mr. Masciarelli and Mr. McGrath to understand the same thing with reference to Mr. Scaccia. I want you all to know that you are each entitled to separate counsel. But I also tell you if you want to be represented by the same counsel you have that right. But I want it clearly understood that I am putting you on notice now that if there is any possibility of any conflict of interest and I want you to decide now. I don't want any claims later that you didn't have opportunity to have separate lawyers. If there is any possibility of any conflict, now is the time to get individual counsel.

MR. SCACCIA: On that point, may I explain I explored that in depth with Mr. Masciarelli and Mr. McGrath and advised them of any conflict. I am not aware of any and if I become aware of any I will so advise them.

THE COURT: I assume, to follow this further, all the facts have been made known to you?

MR. SCACCIA: I am assuming so.

THE COURT: Have you had assurances of that?

MR. SCACCIA: Yes. They assured me they made a full disclosure.

THE COURT: If you gentlemen should come to the conclusion that a conflict should exist or your lawyers come to that conclusion, or should you come to the conclusion for any reason at all that the attorney should not represent you, or if you feel that it would be improper for them to represent you, I want those feelings made known immediately so that new counsel can be obtained, so you would be prepared to make whatever arrangement is necessary so there will be no delay at all.

Get the rest of the appearances.

MR. BOREANAZ: My name is Harold S. Boreanaz. I am from Buffalo, New York. I appear of counsel to Joseph Maruca and Stanley Rappucci.

THE COURT: The same thing applies to the defendants Maruca and Rappucci. May I have your name, please.

MR. BOREANAZ: Harold Boreanaz.

THE COURT: Any other appearances?

MR. DeSISTI: My name is M. J. DeSisti. I appear for Andrew Quinlan.

THE COURT: According to my check all the defendants are appearing by counsel. Is there any defendant

who does not have counsel appearing here? (No response.)
I take it there are now.

THE COURT: Now call the roll of the defendants.
I want each of the defendants to answer to his name
and enter his plea.

THE CLERK: Frank S. Cannone.

DEFENDANT CANNONE: Here.

THE CLERK: Do you waive the reading of the indictment?

MR. ALLIO: Yes.

MR. SCACCIA: Yes.

MR. BOREANAZ: We waive.

MR. De SISTI: Yes.

THE CLERK: How do you plead, Mr. Cannone?

DEFT. CANNONE: Not guilty.

THE CLERK: Stanley A. Rappucci?

DEFT. RAPUCCI: Here.

THE CLERK: Do you waive the reading of the indictment?

DEFT. RAPUCCI: Yes.

THE CLERK: How do you plead?

DEFT. RAPUCCI: Not guilty.

THE CLERK: Thomas A. Gaetani?

DEFT. GAETANI: Here. Not guilty.

THE CLERK: How do you plead?

Transcript of Arraignments on 12-10-74.

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THE CLERK: How do you plead?

DEFT. GAETANI: Not guilty.

THE CLERK: Do you waive the reading of the indictment?

DEFT. GAETANI: Yes.

THE CLERK: Jon N.. English?

DEFT: ENGLISH: Not guilty.

THE CLERK: Joseph N. Maruca?

DEFT MARUCA: Here.

THE CLERK: Do you waive the reading of the indictment?

DEFT. MARUCA: Yes.

THE CLERK: How do you plead?

DEFT. MARUCA: Not guilty.

THE CLERK: Vincent N. Christina?

DEFT. CHRISTINA: Here.

THE CLERK: Do you waive the reading of the indictment?

DEFT. CHRISTINA: Yes.

THE CLERK: How do you plead?

DEFT. CHRISTINA: Not guilty.

THE CLERK: Anthony R. Santacrose, Jr.

DEFT. SANTACROSE: Yes.

THE CLERK: Do you waive the reading of the indictment?

DEFT. SANTACROSE: Yes.

THE CLERK: How do you plead?

DEFT. SANTACROSE: Not guilty.

THE CLERK: Raymond D. Masciarelli?

DEFT. MASCIARELLI: Here.

THE CLERK: Do you waive the reading of the indictment?

DEFT. MASCIARELLI: Yes.

THE CLERK: How do you plead?

DEFT. MASCIARELLI: Not guilty.

THE CLERK: James W. McGrath?

DEFT. McGRATH: Here.

THE CLERK: Do you waive the reading of the indictment?

DEFT. McGRATH: Yes.

THE CLERK: How do you plead?

DEFT. McGRATH: Not guilty.

THE CLERK: Andrew J. Quinlan?

DEFT. QUINLAN: Here.

THE CLERK: Do you waive the reading of the indictment?

DEFT. QUINLAN: Yes.

THE CLERK: How do you plead?

DEFT. QUINLAN: Not guilty.

THE CLERK: Thomas J. Abbadessa?

DEFT. ABBADESSA: Here.

THE CLERK: Do you waive the reading of the indictment?

DEFT. ABBADESSA: Yes.

THE CLERK: How do you plead?

DEFT. ABBADESSA: Not guilty.

THE COURT: All right. All motions are to be made returnable at a motion day of this court to be held in Syracuse, New York, on January 13th. Motion papers are to be filed with the Clerk of the Court by mail and served by mail on the United States Attorney on or before January 2nd -- wait a minute, I metter move that up. Today is the 10th?

MR. SCACCIA: Yes sir.

THE COURT: Served on or before December 24th. That gives you two weeks. Any responsive papers of any nature are to be filed with the Clerk of the Court and served on counsel by mail on or before January 7th. At the time of filing and serving of papers, copies are to be forwarded to me at Auburn.

The Clerk just reminded me some of you gentlemen are not familiar with the practise of this court.

No motions for discovery will be entertained unless it is alleged that the material has been requested and refused by the United States Attorney.

MR. ALLIO: Does that also apply to all motions or just discovery?

THE COURT: All motions. All motions except those for which no time can be fixed. Of course there are some motions that don't occur until after the proof is in. It covers everything. All right. All the defendants are on bail?

MR. ALLIO: With one exception. With the exception of Christina.

THE COURT: He is in custody?

MR. ALLIO: Yes.

THE COURT: All others are out.

MR. ALLIO: Will I have an opportunity of making a motion this morning?

THE COURT: All right. I will hear you at the end of the calendar. Bail is continued on all defendants except Christina.

MR. WELCH: Thank you, Your Honor.

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Transcript of Arraignments on 12-10-74.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- 18 -

74-Cr-144

RAYMOND D. MASCIARELLI and LAWRENCE SCHULTZ.

Defendants.

2

Arraignments in the above-entitled matter were held pursuant to notice at the United States District Court held in and for the Northern District of New York, at Auburn, New York, on December 10th, 1975, before HON. EDMUND PORT, United States District Judge.

A P P E A R A N C E S:

HON. JAMES M. SULLIVAN, Jr., United States
Attorney for the Northern District of New York,
Federal Building, Syracuse, New York, By: EUGEN
WELCH, ESQ., Assistant U. S. Attorney, appearing in
behalf of the United States;

- and -

DANTE M. SCACCIA, ESQ., Attorney and Counsellor
at Law, Syracuse, New York, appearing in behalf of
Defendant Masciarelli.

Defendant Masciarelli appearing. Defendant
Schultz not appearing.

- - - - -

THE CLERK: United States against Raymond D.
Masciarelli and Lawrence Schultz, 74-Cr-144.

MR. WELCH: If Your Honor please, Mr. Masciarelli
appears for arraignment after being indicated by the
same grand jury on one count of interstate transporta-
tion of wagering information.

MR. SCACCIA: We waive the reading and enter a
plea of not guilty. We have a copy of the indict-
ment.

THE COURT: All right. Enter a plea of not
guilty. The same time and conditions are fixed for

motions as in the previous case.

What about Schultz?

MR. WELCH: He was notified to be here today and contacted our office late last week and indicated some financial difficulties in getting here today.

THE COURT: Is he on bail?

MR. WELCH: No. No warrants were issued in this case. I have asked the F.B.I. to conduct an investigation to find out if there is a basis.

THE COURT: If there is not advise me and I will issue a warrant.

MR. WELCH: There is a good possibility he will dispose of it in Ohio subject to Rule 20. We can't get him here today in any case. There may be some way of disposing of it through Rule 20 in Ohio.

THE COURT: All right. I will remove Schultz from the calendar subject to being restored.

MR. SCACCIA: May bail be continued for this defendant?

THE COURT: Bail is continued.

MR. SCACCIA: Thank you, Judge.

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REPORTER'S CERTIFICATION

I, F. ROBERT JORDAN, Official Court Reporter
for the United States District Court in and for the
Northern District of New York, do certify the fore-
going to be a true and accurate transcription of the
stenographic notes as taken by me during the afore-
said proceedings.

F. Robert Jordan

Official Court Reporter

**Demand Letter of 12-12-74, from Attorney Remo A. Allio
to Eugene Welch. Government's Response of 12-20-74.**

REMO A. ALLIO
ATTORNEY AT LAW
18 WASHINGTON AVENUE
ENDICOTT, NEW YORK 13760

748-1511

P.O. BOX 80

December 12, 1974

Eugene Welch, District Attorney
Attorney General's Office
U. S. District Court
Federal P.O. Building
Syracuse, New York 13201

Re: U.S.A. vs. Frank S. Cannone, et al

Dear Mr. Welch:

The Court has suggested that prior to making motions, I request that you turn over copies of, or make available for my perusal, certain items which I feel may be necessary for the defense of some of the defendants in this case.

Please be further advised, that, pursuant to that directive, I respectfully request as follows:

1. A transcript of all intercepted telephone communications, within the outline of the indictment, wherein it is alleges that Thomas J. Abbadessa, Anthony Santacrose, Jr., Frank S. Cannone and Thomas A. Gaetani participated.
2. A copy of all statements made by the aforementioned defendants to any and all law enforcement agencies concerning their activities during the period of the indictment.
3. A copy of all statements made by the defendants and co-conspirators to members of the Federal Bureau of Investigation and/or members of any other government agencies, including all statements of witnesses, whether signed by said witnesses, or not signed by said witnesses, and copies of the confidential reports of the government agencies taking these statements and/or working on these cases, and a copy of their periodic reports to the U. S. Attorney General's Office.
4. That the government furnish the above-named defendants with the transcripts, memorandum or evidence obtained as a result of any electrical surveillance, and the authorized, or unauthorized interpretation of said wire communications.

Demand Letter of 12-12-74, from Attorney Remo A. Allio
to Eugene Welch. Government's Response of 12-20-74.

Mr. Eugene Welch, District Attorney
Page 2
December 12, 1974

5. That the government provide the defendants with any alleged statements made by them that the government intends to use, or might use, as evidence during the trial of this matter, or any statements made by them, which the government will not use at said trial and all statements made by the co-conspirators which either tend to incriminate or exculpate the defendants.
6. That the government produce a copy of any photographs, books, papers, documents, tangible subjects, buildings or places, or copies of portions thereof which are in the possession, custody and control of the government.
7. That the government provide the defendants with copies of their respective criminal records.
8. That the government provide the defendants with copies of the criminal records of all of the co-conspirators.
9. That the government provide and disclose any statements which they intend to offer, of persons now deceased, or made in the presence of persons now deceased.

Very truly yours,



REMO A. ALLIO

RA:lg

Demand Letter of 12-12-74, from Attorney Remo A. Allio
to Eugene Welch. Government's Response of 12-20-74.

CR74-0974/EW

December 20, 1974

Remo A. Allio, Esq.
19 Washington Avenue
Endicott, New York 13760

RE: United States -v- Cannone, et al.,
#74-CR-142

Dear Mr. Allio:

In response to your letter dated December 12, 1974, received in this office December 17, 1974, and seen by me December 19, 1974, please be advised:

1. Upon appropriate authorization from the Court the government will provide you with a copy of those transcripts it has prepared for its use in this matter.
2. The government will provide you with any statements made by the defendants mentioned in your paragraph number one to any member of the FBI.
3. The government refuses this request.
4. The government submits that response numbered 1. above is sufficient.
5. The government will provide you with any statements made by the defendants named in your paragraph numbered one which it intends to use at trial as well as any statements which tend to exculpate those defendants.
6. The government refuses this request in its present form.
7. The government will provide Mr. Allio with a copy

Demand Letter of 12-12-74, from Attorney Remo A. Allio
to Eugene Welch. Government's Response of 12-20-74.

of any criminal record sheets it has concerning the
defendants named in paragraph numbered one.

8. The government refuses this request.
9. The government refuses this request.

Very truly yours,

JAMES M. SULLIVAN, JR.
United States Attorney

Eugene Welch
Assistant U. S. Attorney

EW/vam

Attorney Allio's Motion, dated 12-20-75 and
Government's Response, dated 1-9-75.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-vs-

FRANK S. CANNONE, STANLEY A. RAJUCCI,
THOMAS A. GAETANI, JON N. ENGLISE,
JOSEPH N. MARUCA, VINCENT N. CHRISTINA,
ANTHONY R. SANTACROSE, JR., RAYMOND
D. MASIARELLI, JAMES W. MC GRATH,
ANDREW J. QUINLAN AND THOMAS J.
ABBA DESSA,

Defendants.

NOTICE OF MOTION

Criminal No. 74-CR-142

I LEAVE TAKE NOTICE that upon the annexed, duly verified affidavit of
Remo J. Allio, Attorney, and upon all of the papers and proceeding had herein, the
undersigned will move this Court in the United States Court House located at
Syracuse, New York, on the 13th day of January, 1975, at 10:00 A.M., or as soon
thereafter as counsel can be had, for an Order granting the defendants' demands
as follows:

1. Bill of Particulars, request for which is set forth herein.
2. A severance of the 3rd count of the indictment so that the 1st and 2nd
counts will be tried at one time and the 3rd count shall be tried at another time.
3. That the government provide the defendants with any transcripts, memoran-
dum, or evidence obtained as a result of any electronic surveillance or inter-
ception of telephone conversations.
4. That the government provide the defendants with any statements by the
defendants which the government intends to use, or might use, in the trial of
this matter.
5. That the government provide the defendants with any statements made by
co-conspirators which either intend to incriminate them or exculpate them.

Attorney Allio's Motion, dated 12-20-75 and
Government's Response, dated 1-9-75.

- 6/ That the government be directed to permit the defendants to inspect and copy any photographs, books, papers, documents, tangible objects, buildings, places or copies in the possession thereof which are in the possession, custody or control of the government.
7. That the government provide full and complete discovery and inspection as provided in Rule 16 of the Federal Rules of Criminal Procedure.
8. That the government provide the defendants with any material commonly referred to as "Brady" material, either now, as within the knowledge of the government, or at the time the knowledge is obtained.
9. That the government allow the defendant, Anthony R. Santacrose, Jr., to take a polygraph test by one of five government polygraph operators, and allow the defendant, Anthony R. Santacrose, Jr., to select from one of the five and direct that he be examined on all matters as set forth in the indictment, only, on condition that the testimony and any information obtained from his testimony cannot be used against any of the other defendants in this matter.
10. That this Court grant such other and further relief as may seem just and proper, and respectfully reserve the right of these defendants to join other defendants in motions they may make.

Dated: December 20, 1974

Yours, etc.

REMO A. ALLIO
Attorney for defendants,
FRANK S. CANNONE, THOMAS A.
GAETANI, THOMAS J. ABBADESSA,
VINCENT N. CHRISTINA AND ANTHONY
R. SANTACROSE, JR.
Office & P.O. Address
19 Washington Avenue
Endicott, New York 13760
Tel. 607/748-1511

TO: Clerk, U.S. District Court
No. District of New York
U.S. Bldg
Utica, New York

Eugene Welch, Dist. Atty.
Attorney General's Office
Federal Bldg.
Syracuse, New York 13201

Hon. Edmund Port
U. S. District Judge
USWD & Courthouse
Ithaca, New York 13021

Attorney Allio's Motion, dated 12-20-75 and
Government's Response, dated 1-9-75.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

FRANK S. CANNONE, STANLEY A. RAPUCCI,
THOMAS J. GAETANI, JOHN N. ENGLISH,
JOSEPH N. MARUCI, VINCENT N. CHRISTINA,
ANTHONY R. SANTACROSE, JR., RAYMOND
D. MASCIAPELLI, JAMES W. MC GRATH,
ANDREW J. QUINLAN AND THOMAS J.
ABBADESSA,

Defendants.

MOTION FOR BILL OF
PARTICULARS

CRIMINAL NO. 74-CR-142

The defendants, Frank S. Cannone, Thomas A. Gaetani, Thomas J. Abbadessa, Vincent N. Christina, and Anthony R. Santacrose, Jr., hereby move for an Order requiring the United States of America to furnish them, within a time to be therein specified, a written Bill of Particulars as to the following matters alleged in the Indictment herein and require the United States of America to furnish the following requested information in the said Bill of Particulars.

1. Whether any of the defendants and/or co-conspirators named in the indictment were acting on behalf of the United States Government at any time during the period covered by the indictment.
2. Set forth the criminal records of the aforementioned defendants as contained in the files of the Federal Bureau of Investigation.
3. Set forth any additional overt acts which could have been included in all or any of the counts, but were not, and which the government intends to present testimony about at the trial.

Attorney Allio's Motion, dated 12-20-75 and
Government's Response, dated 1-9-75.

4. Inform the defendants, and each and every one of them, as to which of the defendants, or co-conspirators, he is alleges to have conspired with, directly, as part of the overt conspiracy.

5. Set forth the acts, which each of the defendants making this application set forth herein, committed and their respective part, which act would control, or which words would logically conclude that they, unlawfully, willingly and knowingly, financed, managed, supervised, or directed, or owned an illegal gambling business, said illegal gambling involving bookmaking, and who were their respective partners and with which other four were each of them associated in this alleged illegal bookmaking operation and what was the alleged role, or part, played by each as regards to the other; in essence, what act did each of them perform with what four others, and what were the roles of the four others, with explicit accounts of conduct which would lead the government to conclude that there was a combination of at least five people in bringing forth a bookmaking operation.

6. Set forth the substance of any conversation between Anthony R. Santacrose, Jr., and any or all of the others, which the government expects to prove would lead a reasonable and prudent man to believe that there was a business relationship, as partners, between Anthony R. Santacrose, Jr. and four others, either via conversation or overt acts.

7. Set forth whether the government intends to present at the trial evidence obtained by means of wire-tapping or any means of electronic surveillance, and, if so, set forth the circumstances under which said electronic surveillance was conducted and the substance of the evidence that was obtained and the transcript and/or a copy of the conversation intercepted which the government intends to present as proof.

Attorney Allio's Motion, dated 12-20-75 and
Government's Response, dated 1-9-75.

Dated: Endicott, New York.
December 20, 1974

REMO A. ALLIO
Attorney for Defendants,
Frank S. Cannone, Thomas A.
Gaetani, Thomas J. Abbadessa,
Vincent N. Christina and
Anthony R. Santacrose, Jr.

Attorney Allio's Motion, dated 12-20-75 and
Government's Response, dated 1-9-75.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v8-

FRANK S. CANNONE, STANLEY A. RAFFUCCI,
THOMAS A. GAETANI, JON N. ENGLISH,
JOSEPH N. MARUCA, VINCENT N. CHRISTINA,
ANTHONY R. SANTACROSE, JR., RAYMOND
D. MASCIARELLI, JAMES W. MC GRATH,
ANDREW J. QUINLAN AND THOMAS J.
ABE DESSA,

Defendants.

AFFIDAVIT

Criminal No. 74-CR-142

STATE OF NEW YORK :
SS.:
COUNTY OF BROOME :

REMY J. ALLIO, being duly sworn, deposes and says:

1. That I am the attorney for Anthony R. Santacrose, Jr., and others.
2. That I am the attorney for Vincent N. Christina, also.
3. That it is necessary, in order to properly defend the aforementioned,

because of the general language employed in the Indictment, and because the defendants
are uncertain of their exact conduct according to the allegations of the government
to furnish a basis of their criminal liability, that the government furnish a Bill of
Particulars.

4. That defendant is not able to prepare the defense on the basis of the in-
formation provided in the indictment.
5. That Count 3 of the Indictment alleges overt acts on the part of Vincent
N. Christina, which occurred after the time as set forth in Counts 1 and 2 in the
Indictment and which do not constitute, according to the indictment, a part of the
overt acts of the alleged conspirators under Count 2.

Attorney Allio's Motion, dated 12-20-75 and
Government's Response, dated 1-9-75.

6. That testimony concerning the evidence in Count 3, which does not involve any of the other defendants, other than Joseph N. Maruca, would be extremely prejudicial to any of the defendants in Counts 1 and 2, although they would have no probative value as to the guilt or innocence of those accused in Count 1 and Count 2.

7. That Vincent N. Christina is not at all even mentioned, either as a conspirator, or a co-conspirator, in Count 3 and is not mentioned in Count 1 and to introduce evidence against those other defendants at the same time as evidence is introduced against him is prejudicial to him in his defense.

8. That the case in Count 3 is, upon information and belief, completely different and divorced from any of the activities of Counts 1 and 2 of the indictment and can be tried in a very short period of time and the observation concerning time is mentioned in contrast to the possibility of the time necessary to try Counts 1 and 2 of this indictment.

WHEREFORE, for reasons set forth, your defendant respectfully requests that this court grant the motions requested and your defendant further requests an order granting such other and further relief as this Court may deem just and proper.

James A. Allio
JAMES A. ALLIO

STATE OF NEW YORK :

SS.:

COUNTY OF BROOME :

James A. Allio, Being sworn, says: I am the attorney in the action herein; I have read the annexed affidavit and know the contents thereof and the same are true

Attorney Allio's Motion, dated 12-20-75 and
Government's Response, dated 1-9-75.

to my knowledge, except those matters therein which are stated to be alleged on
information and belief, and as to those matters, I believe them to be true.

Renzo Allio

RENO A. ALLIO

Sworn to before me this 27th of

day of December, 1974.

Dec 27 1974

LEONARD J. GIERA
Notary Public, State of New York
Residing in Monroe County
My commission expires March 30, 1976

Attorney Allio's Motion, dated 12-20-75 and
Government's Response, dated 1-9-75.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA) Criminal No. 74-CR-142
V.) GOVERNMENT'S RESPONSE TO
FRANK S. CANNONE, ET AL.) MOTION BY ATTORNEY REMO A. ALLIO

In response to the motion by Attorney Remo A. Allio,
the Government's position on January 13, 1975, will be as follows:

BILL OF PARTICULARS

1. The government will oppose this demand which appears to be an attempt to ascertain the identity of the confidential sources of information used by the F.B.I. in support of its application for authorization to conduct electronic surveillances in this matter.
2. The government will provide Attorney Allio with a copy of the criminal records of the defendants he represents.
3. The government opposes this demand which is nothing more than an attempt to expose, prior to trial, the government's evidence.
4. The government will oppose this demand on the basis that the indictment is sufficient.
5. The government opposes this demand on the basis that the indictment is sufficient.
6. The government opposes this demand except insofar as it is disclosing the statements of Mr. Santacrose by disclosing the contents of electronic surveillances.
7. The government, upon appropriate authorization from the Court, will disclose transcripts of conversations it intends to use at trial, as well as copies of the authorization orders and applications therefor, and will make available, copies of the tape recordings for the defense to listen to.

SEVERANCE

The Government will oppose Attorney Allio's motion for severance.

Attorney Allio's Motion, dated 12-20-75 and
Government's Response, dated 1-9-75.

DEFENDANTS' STATEMENTS

The government will provide Mr. Allio with copies of any statements made by the defendants he represents, which statements the government intends to use at trial.

CO-CONSPIRATORS' STATEMENTS

The government opposes the demand for statement^t by co-conspirators except insofar as any exculpatory statements the government will provide to the defense.

INSPECTION OF DOCUMENTS AND OTHER
TANGIBLE OBJECTS

The government will oppose this demand in its present general form. It may be that the government can comply with this demand upon some showing of reasonableness and materiality as well as upon a more specific statement of exactly what it is the defense wishes to examine.

POLYGRAPH

The defense has requested an Order that Anthony R. Santacrose, Jr. be given a polygraph test.

The government will oppose this request.

Respectfully submitted,
JAMES M. SULLIVAN, JR.
United States Attorney

By: *Eugene Welch*
Eugene Welch
Assistant U. S. Attorney
Federal Building
Syracuse, New York 13201

(315) 473-6560

Dated:
January 9, 1975

Attorney Harold J. Boreanaz's Motion, dated 12-23-74.
Government's Response, dated 1-9-75.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-vs-

Indictment No. 74-CR-142

FRANK S. CANNONE, and others

SIRS:

PLEASE TAKE NOTICE, that upon the annexed affidavit of HAROLD J. BOREANAZ, sworn to the 23rd day of December, 1974, and upon the indictment herein and upon all prior proceedings heretofore had, a motion will be made at a term of this Court in the United States District Courthouse at Syracuse, New York, on the 13th day of January, 1975, at 10:00 o'clock in the forenoon or as soon thereafter as counsel can be heard, before the HON. EDMUND PORT, District Judge, seeking the following relief:

1. An order directing that the defendants be fully informed as to the existence of any and all electronic surveillance engaged in by any governmental agency in connection with any and all defendants herein named and/or co-conspirators not co-defendants herein, including all forms of electronic surveillance whether by interception of telephonic communications or otherwise. The information directed to be supplied to specifically include, but not necessarily be limited to the following:

a) Copies of any and all orders of any Court purporting to allow any such electronic surveillance.

Attorney Harold J. Boreanaz's Motion, dated 12-23-74.
Government's Response, dated 1-9-75.

b) Copies of any and all applications, affidavits, papers, representations or other submissions purporting to support any orders described in (a) above, including a verbatim disclosure of any oral representations made in support of any such order or continuation or extension thereof or interim report made thereunder.

c) A complete and verbatim transcription of any conversation allegedly seized under the purported authority of any order described in (a) above which is intended in any way to be used upon the trial of the indictment herein.

2. An order directing that the United States Attorney disclose to the defendants herein whether any physical evidence allegedly seized at the time of the arrest of the defendants MARUCA and RAPPUCCI upon any charges arising out of the incidents alleged in the indictment herein are intended to be used as evidence upon the trial of the indictment herein and if so an order giving said defendants an inspection of the same.

3. An order directing that the United States Attorney disclose the existence of any physical evidence allegedly seized at the time of the arrest of any defendant or co-conspirator not a co-defendant upon any charges either arising out of the incidents alleged in the indictment herein or arrests with respect to matters which gave rise to the investigation which lead to the return of the indictment herein.

4. An order directing that the United States Attorney permit a full and complete discovery and inspection pursuant to Rule 16.

5. An order directing that the United States Attorney disclose whether the Grand Jury proceedings resulting in the indictment herein

Attorney Harold J. Boreanaz's Motion, dated 12-23-74.
Government's Response, dated 1-9-75.

were transcribed and if so, further directing that the same be provided to the defendants MARUCA and RAPPUCCI so as to afford each the opportunity to move to dismiss the indictment.

6. An order directing a severance of Count 3 from the remainder of the indictment.

7. An order directing that the defendants MARUCA and RAPPUCCI each be granted a separate trial upon Counts 1 and 2 of the indictment.

8. An order directing that the United States Attorney disclose the existence of any alleged statements or admissions intended to be used upon the trial herein as evidence against any defendant.

9. An order dismissing the indictment.

10. An order directing disclosure of and the provision of copies of any and all documents, maps, diagrams, photographs, reports, test results or other scientific data intended to be used upon the trial of the indictment herein.

11. An order directing that a hearing be allowed to afford the defendants the opportunity to contest the legality of any and all forms of evidence intended to be offered in support of the indictment including but not limited to statements, admissions, all forms of physical evidence, and any and all evidence in any way procured under the purported authority of any Court order.

12. An order directing that a Bill of Particulars be granted setting forth the following:

a) As to the defendants MARUCA and RAPPUCCI with respect to

Attorney Harold J. Boreanaz's Motion, dated 12-23-74.
Government's Response, dated 1-9-75.

Count I of the indictment:

(1) The identities of those individuals alleged to be "involved" in the illegal gambling business which are described as being not named but known to the Grand Jury.

(2) The exact date and/or dates during the period alleged on which it is claimed that the gambling business had a "gross revenue" of \$2,000.00 or more.

(3) An exact statement of which period of time "in excess of thirty days" it is claimed that the illegal gambling business "remained in substantially continuous operation".

(4) An exact statement of each of the Sections of the New York State Penal Law claimed to have been violated and an exact statement naming the persons or person alleged to have violated each of said Sections together with the exact place and exact time of said violations.

b) As to the defendants MARUCA and RAPPUCCI with respect to Count II of the Indictment:

(1) The exact time and place at which it is claimed by the Government that the respective defendants joined or became a part of the conspiracy.

(2) The exact time and place at which it is claimed by the Government that each of the respective defendants last performed an act in furtherance of the alleged conspiracy.

c) As to the defendant MARUCA with respect to Count III of the indictment:

Attorney Harold J. Boreanaz's Motion, dated 12-23-74.

Government's Response, dated 1-9-75.

(1) The exact place at which it is claimed that MARUCA beat BONTEMPO.

(2) The exact time when it is claimed that MARUCA beat BONTEMPO.

13. An order directing that the Government provide defense counsel with all material now known to be, or, which, through due diligence may be learned from the Government's investigating agencies, to be exculpatory in nature or favorable to the accused or which may reasonably lead to exculpatory material.

14. An order directing that the Government provide defense counsel with the names and current addresses of any and all witnesses intended to be called upon the trial together with the arrest and/or conviction records, if any, of each.

15. Leave of the Court to further pursue any and all motions which might reasonably follow from information made available as the result of the disclosure of any of the foregoing.

WHEREFORE, the defendants MARUCA and RAPPUCCI seek the relief herein set forth, bearing in mind that any and all different or additional relief which may to the Court seem just and proper.

Yours, etc.

HAROLD J. BOREANAZ
Attorney for Defendants
MARUCA and RAPPUCCI
Office & P.O. Address
736 Brisbane Building
Buffalo, New York 14203
716/854-5800

Attorney Harold J. Boreanaz's Motion, dated 12-23-74.
Government's Response, dated 1-9-75.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-vs-

Indictment No. 74-CR-142

FRANK S. CANNONE, and others

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

HAROLD J. BOREANAZ, being duly sworn, deposes and says that:

1. I am attorney for the defendants herein, JOSEPH N. MARUCA and STANLEY A. RAPPUCCI.
2. I make this affidavit in support of the attached motions.
3. I will serve a copy of these papers upon the United States Attorney by way of request for the relief sought seeking voluntary compliance before requesting the Court to rule upon any request herein made.
4. The discovery herein requested is essential to a proper representation of the defendants.

5. I do not believe that the Government's case will be prejudiced in any manner by compliance with the requests herein made.

6. Upon information and belief the Government, at various times and places, prior to the return of the indictment herein has engaged in

Attorney Harold J. Boreanaz's Motion, dated 12-23-74.
Government's Response, dated 1-9-75.

electronic surveillance of persons named as defendants herein.

7. Upon information and belief conversations of the aforesaid persons have been seized and will in all likelihood be offered in evidence by the Government in support of the indictment.

8. Severe prejudice will result to the defendant MARUCA if he is compelled to stand trial upon Count III of the indictment before the same jury that hears evidence with respect to Counts I and II.

S/HAROLD J. BOREANAZ

HAROLD J. BOREANAZ

Sworn to before me this

23rd day of December, 1974.

S/NANCY L. LECHNER

NANCY L. LECHNER
COMMISSIONER OF DEEDS
In and for the City of Buffalo, N.Y.
My Commission Expires Dec. 31, 1974

Attorney Harold J. Boreanaz's Motion, dated 12-23-74.
Government's Response, dated 1-9-75.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA) Criminal No. 74-CR-142
V.) GOVERNMENT'S RESPONSE TO
FRANK S. CANNONE, and others.) DISCOVERY MOTION BY
) ATTORNEY HAROLD J. BOREANAZ

In response to the motion made for discovery by Attorney Harold J. Boreanaz, the Government's position on January 13, 1975, will be as follows:

1. a) and b). The government will provide the defense, upon appropriate authorization from the Court, copies of the Order authorizing electronic surveillance during the period of this indictment, and the applications and affidavits in support thereof.

c). The government will provide to the defense copies of those conversations it has transcribed.

2. and 3. The government will provide the defense an opportunity to inspect any evidence which may have been seized incident to the arrests on the charges in this indictment.

4. The government cannot take a position on this item without more specificity.

5., 6., and 7. The government will oppose these items.

8. The government will provide Mr. Boreanaz with any statements made by his clients to the F.B.I., if any.

9. The government opposes this item.

10. The government will provide scientific test results, if any.

11. The government will oppose this item unless some need is shown for a hearing.

12. a) and b). The government will oppose these items on the basis that the indictment is sufficient.

c). The Government will provide Mr. Boreanaz with the approximate time and place where Maruca beat Bontempo.

13. The government will provide the defense with any exculpatory material it has in its possession.

Attorney Harold J. Boreanaz's Motion, dated 12-23-74.
Government's Response, dated 1-9-75.

14. The government will oppose this item.

Respectfully submitted,
JAMES M. SULLIVAN, JR.
United States Attorney

By: *Eugene Welch*
Eugene Welch
Assistant U. S. Attorney
Federal Building
Syracuse, N. Y. 13201
(315) 473-6660

Dated: January 9, 1975

**Motion for Bill of Particulars by Attorney M. J. DeSisti
and Government's Response, dated 1-9-75.**

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

)

vs.

)

CANNONE, ET AL. and
ANDREW J. QUINLAN

)

Criminal No. 74-CR-142

)

)

MOTION FOR BILL OF PARTICULARS

The defendant above named, Andrew J. Quinlan, by his attorney, M. J. DeSisti, Esq., hereby moves for Bill of Particulars in above captioned matter to the extent and for reasons set forth herein below.

1. On the 18th day of November, 1974, a Bill of Indictment for the Northern District of New York was returned against defendant, Andrew J. Quinlan, alleging a violation of 18 USC, Sections 2, 371 and 1955.
2. On the 10th day of December, 1974, the defendant, Andrew J. Quinlan, was arraigned in the said Court and entered a plea of not guilty to the said indictment.
3. Because of the generality of the language employed in the indictment, this defendant is uncertain of the exact conduct which, according to the allegation of the Government, forms the basis of his criminal liability. Nor is he able to prepare his defense on the basis of the information provided in the indictment and furnished by Assistant U. S. Attorney, Eugene Welch.
4. The defendant therefore requests this Court to direct the Government to furnish to the defendant, in detail, the following information:
 - (a) The specific facts now in the possession of the

Motion for Bill of Particulars by Attorney M. J. DeSisti
and Government's Response, dated 1-9-75.

Page 2

Motion for Bill of Particulars

Government, its attorneys or agents, which lead the Government to conclude that this defendant, Andrew J. Quinlan, did unlawfully, wilfully and knowingly conduct, finance, manage, supervise, direct and own a part of an illegal gambling business, said illegal gambling business involving book-making, that is the giving and accepting of line information, wagers and lay-off on sports events and horse races, in violation of the laws of the State of New York (New York Penal Law, Section 225.00 and following) in which said business was conducted or carried on as a co-conspirator in the said crime.

- (b) An application for the said alleged wiretap as set forth in the said Bill of Indictment.
- (c) All the supporting affidavits and other evidence which would go to the good faith of the interception as alleged.
- (d) The order and execution for authorization of the said wiretap.
- (e) Contents of any and all intercepted wiretap and oral communication or evidence derived therefrom or otherwise disclosed to prosecution.
- (f) Copies of all books, papers, documents or photographs to be used by prosecution in this case.
- (g) Names of all persons whose testimony the prosecution will use.
- (h) Copies of all statements made by any of the defendants to third persons and those made to agents or officers on behalf of the prosecution.
- (i) Any right to inspect any and all object or articles which prosecution has seized or in their possession from the

Motion for Bill of Particulars by Attorney M. J. DeSisti
and Government's Response, dated 1-9-75.

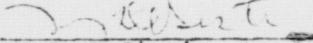
Page 3

Motion for Bill of Particulars

defendant or any third persons to be used in this case.

(j) A list of the essential elements of the crime charged
against Andrew J. Quinlan.

(k) Any other information as may be necessary to enable
the defendant, Andrew J. Quinlan, to determine the basis on which
the Government asserts the Defendant has violated 18 USC, Sections
2, 371 and 1955.



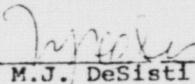
M.J. DeSisti

Attorney for Defendant

Motion for Bill of Particulars by Attorney M. J. DeSisti
and Government's Response, dated 1-9-75.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion
was served upon the United States Attorney for the Northern
District of New York on December 19, 1974 by depositing the same
in a regular depository of the United States Mails, with proper
postage affixed, addressed to James M. Sullivan, Jr., United
States Attorney, Federal P.O. Building, Syracuse, N.Y. 13201.


M.J. DeSisti

Motion for Bill of Particulars by Attorney M. J. DeSisti
and Government's Response, dated 1-9-75.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	)	Criminal No. 74-CR-142
V.	)	<u>GOVERNMENT'S RESPONSE TO</u>
FRANK S. CANNONE, ET AL.,	)	<u>MOTION BY ATTORNEY M. J. DESISTI</u>
ANDREW J. QUINLAN)	

In response to the requests for discovery by Attorney DeSisti, the Government's position on January 13, 1975, will be:

(a) The government opposes this request on the basis that the indictment is sufficient and the discovery request seeks the pre-trial disclosure of all of the government's evidence and the theory of its case.

(b), (c), and (d) The government will provide the defense, upon appropriate authorization from this Court, copies of the application for, the supporting affidavits, and the Order authorizing electronic surveillance during the period of the indictment herein.

(e) The government will provide to the defense a copy of those transcripts it has prepared and intends to use at trial and will make available for listening by the defense a copy of the tape recordings obtained during the period of this indictment.

(f) The government opposes this demand in its present form as too broad, entirely unreasonable, and lacking any showing of materiality or specificity.

(g) The government will oppose the disclosure of the names of its witnesses.

(h) The government will provide Mr. DeSisti copies of any statements made by his client, Mr. Quinlan, to F.B.I. Agents investigating this case.

(i) The government will provide to Mr. DeSisti an opportunity to inspect any evidence seized from his client Andrew J. Quinlan only.

(j) The government opposes this request on the basis that the indictment is sufficient.

Motion for Bill of Particulars by Attorney M. J. DeSisti
and Government's Response, dated 1-9-75.

(k) The government will oppose this request which is, in effect,
a request for all of the Government's evidence.

Respectfully submitted,
JAMES M. SULLIVAN, JR.
United States Attorney

By: *Eugene Welch*
Eugene Welch
Assistant U. S. Attorney
Federal Building
Syracuse, N. Y. 13201
(315) 473-6660

Dated: at Syracuse, N. Y.

January 9, 1975.

Motions for Discovery and Bills of Particulars by Attorney Dante
 M. Scaccia, in U.S. v. Cannone, et al., #74-CR-142, and in
U.S. v. Masciarelli, et al., #74-CR-144.

Frank C. Love
 Ralph J. Balducci
 Dante M. Scaccia

 Richard J. Buckwold
 74-163

Love, Balducci & Scaccia
 Attorneys at Law

300 Wilson Building
 306 South Salina Street
 Syracuse, New York 13202
 (315) 474-4609 - (315) 422-4000

December 24, 1974

C United States District
 Court Clerk
 Northern District of New
 York
 Federal Building
 Utica, New York

Re: United States of America -v-
 Frank S. Cannone, et al.
 United States of America -v-
 Raymond D. Masciarelli, et al.

 Dear Sir:

P

Enclosed please find original and a copy of motions for severance
 and discovery in the above entitled actions returnable Monday,
 January 13, 1975, at 10 a.m. before Hon. Edmund Port at a motion
 session of the United States District Court of the Northern District
 of New York in the Court Room in the Federal Building, Syracuse,
 New York.

Y Please file the original and date stamp the copy, returning said
 copy to this office.

By carbon copy of this letter of transmittal together with enclosures
 as indicated below, Judge Port and the United States Attorney are
 being supplied with copies of all motion papers.

Very truly yours,

LOVE, BALDUCCI & SCACCIA

By:

DMS.jmb
 Enclosures
 cc. Hon. Edmund Port
 ✓United States Attorney

Dante M. Scaccia

Motions for Discovery and Bills of Particulars by Attorney Dante M. Scaccia, in U.S. v. Cannone, et al., #74-CR-142, and in U.S. v. Masciarelli, et al., #74-CR-144.

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA)
v.) NOTICE OF MOTION
FRANK S. CANNONE, STANLEY A. RAPUCCI,) FOR DISCOVERY
THOMAS A. GAETANI, JON N. ENGLISH, JOSEPH) AND
N. MARUCA, VINCENT N. CHRISTINA, ANTHONY R.) BILL OF PARTICULARS
SANTACROSE, JR., RAYMOND D. MASCIARELLI, JAMES) Criminal
W. McGRATH, ANDREW J. QUINLAN and THOMAS J.) No. 74-CR-142
ABBADESSA)
)

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of Dante M. Scaccia, Esq., sworn to the 24th day of December, 1974, the indictment and all proceedings herein, the defendants, RAYMOND D. MASCIARELLI and JAMES W. McGRATH, will move this Court at the Federal Building in Syracuse, New York on January 13, 1975 at 10:00 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an Order pursuant to Federal Rules of Criminal Procedure 7(f), 16(a) and 16(b), directing the United States Attorney to comply with the information demand contained in the letter of December 18, 1974, a copy of which is annexed hereto and made a part hereof, and for such other and further relief as to the Court may seem just and proper.

Dated: Syracuse, New York
December 24, 1974

Yours, etc.

LOVE, BALDUCCI & SCACCIA
Dante M. Scaccia, Esq.,
of Counsel
Attorneys for Defendants
RAYMOND D. MASCIARELLI
and JAMES W. McGRATH
Office & P. O. Address
300 Wilson Building
306 South Salina Street
Syracuse, New York 13202
Tel. (315) 474-4603

TO: UNITED STATES ATTORNEY
Federal Building
Syracuse, New York 13202

CLERK
United States District
Court
Northern Dist. of New York
Federal Building
Utica, New York

HON. EDMUND PORT
U. S. Dist. Court Judge
Northern Dist. of New York
Auburn, New York

Motions for Discovery and Bills of Particulars by Attorney Dante M. Scaccia, in U.S. v. Cannone, et al., #74-CR-142, and in U.S. v. Masciarelli, et al., #74-CR-144.

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA)
)
v.)
) AFFIDAVIT OF DANTE M. SCACCIA
FRANK S. CANNONE, STANLEY A. RAPUCCI,)
THOMAS A. GAETANI, JON N. ENGLISH,) Criminal No. 74-CR-142
JOSEPH N. MARUCA, VINCENT N. CHRISTINA,)
ANTHONY R. SANTACROSE, JR., RAYMOND D.)
MASCIARELLI, JAMES W. McGRATH, ANDREW J.)
QUINLAN and THOMAS J. ABBADESSA)
)

UNITED STATES OF AMERICA)
STATE OF NEW YORK) SS:
COUNTY OF ONONDAGA)

DANTE M. SCACCIA, after being duly sworn, deposes and says:

1. That he is attorney for defendants RAYMOND D. MASCIARELLI and JAMES McGRATH and that affiant has examined the documents furnished defendants by the Government in this cause and, further, that affiant has discussed the instant case with attorneys who are or have acted for each of said co-defendants.

2. That based on information obtained from the documents on file furnished by the government and from attorneys representing co-defendants, and in light of affiant's experience, he is informed and believes and thereon alleges that said defendants cannot receive a fair trial if tried jointly. That affiant's belief is based on the information that said defendants have given stories which conflict in some details with respect to the activities of the group in the Southern Tier Area and further which said statements are both inculpatory and exculpatory of co-defendants.

3. That based on the information, belief and experience of affiant, affiant believes it would be impossible as a practical matter for a jury to weigh and consider the extra judicial statements of each individual defendant, considering said statement absolutely and solely against the declaring defendant without comparing said statement with either testimony of or statements by co-defendants, and that it is

Motions for Discovery and Bills of Particulars by Attorney Dante M. Scaccia, in U.S. v. Cannone, et al., #74-CR-142, and in U.S. v. Masciarelli, et al., #74-CR-144.

therefore affiant's opinion that the only way in which his clients can receive a fair trial and have the question of their guilt or innocence predicated solely on evidence admissible against them is if affiant's clients, MASCIARELLI and McGRATH, are tried alone.

4. That affiant is further informed and believes and thereon alleges that his clients, MASCIARELLI and McGRATH, are going to be proceeded against on the theory, among others, that they aided or abetted or counseled or induced or procured the commission of the offense charged in Count One of the indictment and that in order to adequately prepare and conduct a defense that it is necessary for affiant to be advised in writing of the time, place, manner, date and specific acts by which it is believed, under the Government's theory, that the said defendants, MASCIARELLI and McGRATH, aided or abetted or counseled or induced or procured the commission of the offense charged in Count One of the indictment.

5. That affiant is further informed and believes and thereon alleges that the said defendants, MASCIARELLI and McGRATH, were interviewed by agents of the United States and that the said interviews were either recorded or made the subject of a report or both, and that in order to properly prepare, it is necessary that affiant be given opportunity to examine and copy any recording of or report concerning any such interviews.

6. Affiant is further informed and believes and thereon alleges that similar recordings or reports were made with respect to statements made by the co-defendants and that in the event that the moving defendants' request for a severance and separate trial as to themselves alone is not granted, then it is material and necessary that affiant be given the opportunity to examine and copy all of said recordings or reports concerning interviews with co-defendants in order to properly prepare for trial.

7. That affiant is further informed and believes and thereon

Motions for Discovery and Bills of Particulars by Attorney Dante M. Scaccia, in U.S. v. Cannone, et al., #74-CR-142, and in U.S. v. Masciarelli, et al., #74-CR-144.

alleges that the witnesses whom the Government proposes to call during the course of trial have made reports concerning the matters as to which they will testify or, in the alternative, that said witnesses have made statements to agents of the United States, which said statements are the subject of written reports which, in essence, contain a partial verbatim record of the witnesses' statement at or near the time of the events as to which said witness will testify. That affiant believes that it is necessary and material that prior to trial he be given an opportunity to examine and copy all of said reports.

8. Affiant makes this affidavit in support of the annexed Notice of Motion for an Order directing the United States Attorney to comply with the demand contained in deponent's letter of December 18, 1974, a copy of which is annexed hereto and made a part hereof, and marked Exhibit A.

9. That on December 20, 1974, your deponent received a letter from the United States Attorney, dated December 20, 1974, in which letter the United States Attorney sets forth his response to the aforesaid demand, a copy of which is annexed hereto and made a part hereof; and marked Exhibit B.

Dante M. Scaccia
DANTE M. SCACCIA

Subscribed and sworn to before me
this 24th day of December, 1974.

Frank C. Fave
Notary Public
Dec 24 1974

Motions for Discovery and Bills of Particulars by Attorney Dante
M. Scaccia, in U.S. v. Cannone, et al., #74-CR-142, and in
U.S. v. Masciarelli, et al., #74-CR-144.

74-163

December 13, 1974

United States Attorney
Federal Building
Syracuse, New York 13201

Attention: Eugene Welch
Assistant United States Attorney

Re: United States v. Cannone, et al
Criminal No. 74-CR-14

Dear Mr. Welch:

Pursuant to Judge Port's direction during the arraignment of the above entitled matter in Federal Court in Auburn on December 10, 1974 as a condition precedent to the making of discovery motions, this letter constitutes the required request made of the United States Attorney, since a previous request of and refusal by the United States Attorney must be alleged in the moving papers and, further, pursuant to your express statement made to counsel that any and all such requests should be in written form and I hereby submit this written demand to you:

Items sought for discovery.

1. Testimony of each defendant before the grand jury.
2. Any and all statements and/or admissions of the defendants and/or unindicted co-conspirators, whether in writing, recorded, or oral, and whether provided to the government directly or indirectly.
3. Verbatim transcript copies of all conversations of defendants and/or unindicted co-conspirators, either between themselves or with others, recorded and/or obtained through electronic surveillance, whether federal or state, and whether authorized or not.
4. Complete disclosure of all evidence of an exculpatory nature in whatever form, testimonial, documentary or otherwise, and whether furnished directly or indirectly by the defendants, unindicted co-conspirators or others including transcripts of all recordings whether by electronic surveillance or memorandum summary or otherwise.

Motions for Discovery and Bills of Particulars by Attorney Dante
M. Scaccia, in U.S. v. Cannone, et al., #74-CR-142, and in
U.S. v. Masciarelli, et al., #74-CR-144.

United States Attorney
Page 2

December 18, 1974

5. Discovery and inspection of all books, papers, documents and tangible objects within the possession or control of the government following the entry of the premises where the alleged illegal gambling took place, and whether such objects were found on the premises or on the defendants and/or unindicted co-conspirators or on the defendants' and/or co-conspirators' premises.

We request a bill of particulars of the following items:

- a. What conduct by each defendant and/or unindicted co-conspirator is claimed to have been in violation of Section 225.05 of the New York Penal Law of the State of New York.
- b. If it is claimed that the illegal gambling activity took place in more than one location state the different addresses and dates of said activities at said other addresses.
- c. State the specific dates and times of the day or night when the alleged illegal gambling games took place, setting forth which dates are Sundays and Mondays and which dates are Wednesdays.
- d. State which of said defendants and/or unindicted co-conspirators, if any, were granted immunity; and, if so, in what form and which type of immunity.
- e. State the specific plan, alleged to have been entered into by the defendants and/or the unindicted co-conspirators, which gives use to the conspiracy alleged in the indictment.

In the interests of the fair administration of criminal justice and in the light of the proposed amendments to the Rules of Criminal Procedure the defendants make the following request with the understanding that in some cases there may be a duplication of requests. The following requests are made in the form *Haec Verba* in the interest of a literal compliance with the language contained in the aforesaid proposed amendments. The defendants are willing to participate in and abide by the Court rules of any "omnibus hearing" presided over by the Court.

- A. Statement of defendant. The defendants request the government to permit the defendants to inspect and copy or photograph any relevant written or recorded statements made by the defendants, or copies thereof, within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government; the substance of any oral statement which the government intends to offer in evidence at the trial made by the defendants whether before or after

Motions for Discovery and Bills of Particulars by Attorney Dante
 M. Scaccia, in U.S. v. Cannone, et al., #74-CR-142, and in
U.S. v. Masciarelli, et al., #74-CR-144.

United States Attorney
 Page 3

December 18, 1974

arrest in response to interrogation by any person then known to the defendants to be a government agent; and recorded testimony of the defendants before a grand jury which relates to the offense charged.

- B. Defendants' prior record. The defendants request that the government furnish to the defendants such copies of their criminal record, if any, as is available to the attorney for the government.
- C. Documents and tangible objects. The defendants request that the government permit the defendants to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the government, and which are material to the preparation of his defense or are intended for use by the government as evidence in chief at the trial, or were obtained from or belong to the defendant.
- D. Government witnesses. The defendants request that the government shall furnish to the defendants a written list of the names and addresses of all government witnesses which the attorney for the government intends to call in the presentation of the case in chief together with any record of prior felony convictions of any such witness which is within the knowledge of the attorney for the government.

Request, in order to afford an opportunity to move to suppress evidence, notice of the government's intention to use (in its evidence in chief at trial) any evidence which the defendants may be entitled to discover under Rule 16 subject to any relevant limitations prescribed in Rule 16.

In view of the time limitations set by the Court for the preparation, filing and service upon the United States Attorney, as well as copies to be filed with the Court, please forward the government's position on the foregoing requests in writing and furnish to the defense on or before the close of business, i.e., 5:00 P.M., Thursday, December 19, 1974. The defense does not intend to impose short-time limitations upon the government, however, in view of the Christmas holiday, secretarial service is at a premium and it is requested that we be notified as promptly as possible in order that the appropriate personnel may be assigned to do the necessary secretarial work involved in the preparation of motion papers should such become necessary.

Very truly yours,

LOVE, BALDUCCI & SCACCIA

By:

DMS:rl

Dante M. Scaccia

Motions for Discovery and Bills of Particulars by Attorney Dante
 M. Scaccia, in U.S. v. Cannone, et al., #74-CR-142, and in
U.S. v. Masciarelli, et al., #74-CR-144.

United States Department of Justice

IN REPLY
 PLEASE REFER
 TO OUR FILE.

UNITED STATES ATTORNEY
 NORTHERN DISTRICT OF NEW YORK
 FEDERAL BUILDING
 SYRACUSE, N.Y. 13201

December 20, 1974

Dante M. Scaccia, Esq.
 Love, Balducci & Scaccia, Attorneys
 300 Wilson Building
 306 South Salina Street
 Syracuse, New York 13202

Re: United States -v- Cannone, et al.,
#74-CR-142
United States -v- Masciarelli, et al.,
#74-CR-144

Dear Mr. Scaccia:

In reply to your letter of December 18, 1974, please be advised that since your demands in both letters were identical (the same letter typed twice with different captions), I will respond with only one letter and unless otherwise noted, my response applies in both cases. Because you represent only Masciarelli and McGrath, I understand your references to "defendants" to refer to only Masciarelli and McGrath and, unless I note otherwise, when I refer to "defendants" herein, I mean only Masciarelli and McGrath.

"Items sought for discovery."

1. Masciarelli and McGrath did not testify before the grand jury.
2. The government will provide Mr. Scaccia with all statements made by the defendants Masciarelli and McGrath only.
3. Upon appropriate authorization from the Court

**Motions for Discovery and Bills of Particulars by Attorney Dante
M. Scaccia, in U.S. v. Cannone, et al., #74-CR-142, and in
U.S. v. Masciarelli, et al., #74-CR-144.**

the government will provide Mr. Scaccia with a copy of those transcripts it has prepared for its use in this matter.

4. The government will provide Mr. Scaccia with any exculpatory evidence it has upon appropriate authorization from the Court.

5. The government will allow inspection by Mr. Scaccia of those tangible items of evidence seized pursuant to search warrants from the persons of Masciarelli and McGrath if anything, and from the premises wherein those two defendants conducted their part of this illegal gambling business.

Request for bill of particulars:

a. The government submits the indictment is sufficient in this regard.

b. The government will provide Mr. Scaccia with this requested information as it applies to defendants Masciarelli and McGrath.

c. The government will provide Mr. Scaccia with as specific dates as is possible.

d. The government opposes disclosure of this information except insofar as Masciarelli and McGrath are concerned and in that regard Masciarelli and McGrath did not receive immunity of any kind.

e. The government submits the indictment is sufficient in this regard.

Requests for discovery pursuant to proposed Rules of Procedure not now in effect:

The government opposes the use of any procedure not now in effect. Specifically, we respond as follows:

A. The government will provide Mr. Scaccia with any

Motions for Discovery and Bills of Particulars by Attorney Dante
M. Scaccia, in U.S. v. Cannone, et al., #74-CR-142, and in
U.S. v. Masciarelli, et al., #74-CR-144.

statements made by Masciarelli or McGrath which the government intends to use at trial.

B. The government will provide Mr. Scaccia with copies of Masciarelli and McGrath's criminal records, if any, as it has available.

C. The government refuses this request in its present form except insofar as covered by paragraph number 5 above.

D. The government refuses this request.

Very truly yours,

JAMES M. SULLIVAN, JR.
United States Attorney

Eugene Welch
Eugene Welch
Assistant U. S. Attorney

EW/vam

Motions for Discovery and Bills of Particulars by Attorney Dante M. Scaccia, in U.S. v. Cannone, et al., #74-CR-142, and in U.S. v. Masciarelli, et al., #74-CR-144.

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA	)	NOTICE OF MOTION FOR DISCOVERY
v.	)	AND BILL OF PARTICULARS
RAYMOND D. MASCIARELLI,	)	Criminal No. 74-CR-142
LAWRENCE SHULZ,)	

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of DANTE M. SCACCIA, Esq., sworn to the 24th day of December, 1974, the indictment and all proceedings herein, the defendant, RAYMOND D. MASCIARELLI will move this Court at the Federal Building in Syracuse, New York, on January 13, 1975, at 10:00 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an Order pursuant to Federal Rules of Criminal Procedure 7(f), 16(a) and 16(b), directing the United States Attorney to comply with the information demand contained in the letter of December 18, 1974, a copy of which is annexed hereto and made a part hereof, and for such other and further relief as to the Court may seem just and proper.

Dated: Syracuse, New York
December 24, 1974

Yours, etc.

LOVE, BALDUCCI & SCACCIA
Dante M. Scaccia, Esq.,
of Counsel
Attorneys for Defendant -
RAYMOND D. MASCIARELLI
Office and P.O. Address
300 Wilson Building
306 South Salina Street
Syracuse, New York 13202
Tel. (315) 474-4603

TO: UNITED STATES ATTORNEY
Federal Building
Syracuse, New York 13202

CLERK
United States District Court
Northern District of New York
Federal Building
Utica, New York

HON. EDMUND S. KURT
U.S. District Court Judge
Northern District of New York
Auburn, New York

Motions for Discovery and Bills of Particulars by Attorney Dante
M. Scaccia, in U.S. v. Cannone, et al., #74-CR-142, and in
U.S. v. Masciarelli, et al., #74-CR-144.

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA)
)
 v.)) AFFIDAVIT OF DANTE M. SCACCIA
RAYMOND D. MASCIARELLI,))
LAWRENCE SHULTZ.)) Criminal No. 74-CR-144
)

UNITED STATES OF AMERICA)
STATE OF NEW YORK) SS:
COUNTY OF ONONDAGA)

DANTE M. SCACCIA, after being duly sworn, deposes and says:

1. That he is attorney for defendant, RAYMOND D. MASCIARELLI and that affiant has examined the documents furnished defendant by the Government in this cause and, further, that affiant has discussed the instant case with attorneys who are or have acted for each of said co-defendants.
2. That based on information obtained from the documents on file furnished by the Government and from attorneys representing co-defendants, and in light of affiant's experience, he is informed and believes and thereon alleges that said defendant cannot receive a fair trial if tried jointly. That affiant's belief is based on the information that said defendant has given stories which conflict in some details with respect to the activities of the group in the Southern Tier Area and further which said statements are both inculpatory and exculpatory of co-defendants.
3. That based on the information, belief and experience of affiant, affiant believes it would be impossible as a practical matter for a jury to weigh and consider the extra judicial statements of each individual defendant, considering said statement absolutely and solely against the declaring defendant without comparing said statement with either testimony of or statements by co-defendants, and that it is therefore affiant's opinion that the only way in which his client can

Motions for Discovery and Bills of Particulars by Attorney Dante M. Scaccia, in U.S. v. Cannone, et al., #74-CR-142, and in U.S. v. Masciarelli, et al., #74-CR-144.

receive a fair trial and have the question of his guilt or innocence predicated solely on evidence admissible against him is if affiant's client, MASCIARELLY is tried alone.

4. That affiant is further informed and believes and thereon alleges that his client, MASCIARELLI, is going to be proceeded against on the theory, among others, that they aided or abetted or counseled or induced or procured the commission of the offense charged in Count one of the indictment and that in order to adequately prepare and conduct a defense that it is necessary for affiant to be advised in writing of the time, place, manner, date and specific acts by which it is believed, under the Government's theory, that the said defendant, MASCIARELLI, aided or abetted or counseled or induced or procured the commission of the offense charged in Count One of the indictment.

5. That affiant is further informed and believes and thereon alleges that the said defendant, MASCIARELLI was interviewed by agents of the United States and that the said interviews were either recorded or made the subject of a report or both, and that in order to properly prepare, it is necessary that affiant be given opportunity to examine and copy any recording of or report concerning any such interviews.

6. Affiant is further informed and believes and thereon alleges that similar recordings or reports were made with respect to statements made by the co-defendants and that in the event that the moving defendant's request for a severance and separate trial as to himself alone is not granted, then it is material and necessary that affiant be given the opportunity to examine and copy all of said recordings or reports concerning interviews with co-defendants in order to properly prepare for trial.

7. That affiant is further informed and believes and thereon alleges that the witnesses whom the Government proposes to call during the course of trial have made reports concerning the matters as to which they will testify or, in the alternative, that said witnesses have made statements to agents of the United States, which said

Motions for Discovery and Bills of Particulars by Attorney Dante M. Scaccia, in U.S. v. Cannone, et al., #74-CR-142, and in U.S. v. Masciarelli, et al., #74-CR-144.

alleges that the witnesses whom the Government proposes to call during the course of trial have made reports concerning the matters as to which they will testify or, in the alternative, that said witnesses have made statements to agents of the United States, which said statements are the subject of written reports which, in essence, contain a partial verbatim record of the witnesses' statement at or near the time of the events as to which said witness will testify. That affiant believes that it is necessary and material that prior to trial he be given an opportunity to examine and copy all of said reports.

8. Affiant makes this affidavit in support of the annexed Notice of Motion for an Order directing the United States Attorney to comply with the demand contained in deponent's letter of December 18, 1974, a copy of which is annexed hereto and made a part hereof, and marked Exhibit A.

9. That on December 20, 1974, your deponent received a letter from the United States Attorney, dated December 20, 1974, in which letter the United States Attorney sets forth his response to the aforesaid demand, a copy of which is annexed hereto and made a part hereof, and marked Exhibit B.

12/18/74 D. Scaccia
DANTE M. SCACCIA

Subscribed and sworn to before me
this 24th day of December, 1974.

S/ Frank C. Slocum
Frank C. Slocum
Com. Comptroller
Dec. 24, 1974

Motions for Discovery and Bills of Particulars by Attorney Dante M. Scaccia, in U.S. v. Cannone, et al., #74-CR-142, and in U.S. v. Masciarelli, et al., #74-CR-144.

74-163

December 18, 1974

United States Attorney
Federal Building
Syracuse, New York 13201

Attention: Eugene Welch
Assistant United States Attorney

Re: United States v. Cannone, et al
Criminal No. 74-CR-14

Dear Mr. Welch:

Pursuant to Judge Port's direction during the arraignment of the above entitled matter in Federal Court in Auburn on December 10, 1974 as a condition precedent to the making of discovery motions, this letter constitutes the required request made of the United States Attorney, since a previous request of and refusal by the United States Attorney must be alleged in the moving papers and, further, pursuant to your express statement made to counsel that any and all such requests should be in written form and I hereby submit this written demand to you.

Items sought for discovery.

1. Testimony of each defendant before the grand jury.
2. Any and all statements and/or admissions of the defendants and/or unindicted co-conspirators, whether in writing, recorded, or oral, and whether provided to the government directly or indirectly.
3. Verbatim transcript copies of all conversations of defendants and/or unindicted co-conspirators, either between themselves or with others, recorded and/or obtained through electronic surveillance, whether federal or state, and whether authorized or not.
4. Complete disclosure of all evidence of an exculpatory nature in whatever form, testimonial, documentary or otherwise, and whether furnished directly or indirectly by the defendants, unindicted co-conspirators or others including transcripts of all recordings whether by electronic surveillance, memorandum summary or otherwise.

Motions for Discovery and Bills of Particulars by Attorney Dante M. Scaccia, in U.S. v. Cannone, et al., #74-CR-142, and in U.S. v. Masciarelli, et al., #74-CR-144.

United States Attorney
Page ?

December 18, 1974

5. Discovery and inspection of all books, papers, documents and tangible objects within the possession or control of the government following the entry of the premises where the alleged illegal gambling took place, and whether such objects were found on the premises or on the defendants and/or unindicted co-conspirators or on the defendants' and/or co-conspirators' premises.

We request a bill of particulars of the following items:

- a. What conduct by each defendant and/or unindicted co-conspirator is claimed to have been in violation of Section 225.05 of the New York Penal Law of the State of New York.
- b. If it is claimed that the illegal gambling activity took place in more than one location state the different addresses and dates of said activities at said other addresses.
- c. State the specific dates and times of the day or night when the alleged illegal gambling games took place, setting forth which dates are Sundays and Mondays and which dates are Wednesdays.
- d. State which of said defendants and/or unindicted co-conspirators, if any, were granted immunity; and, if so, in what form and which type of immunity.
- e. State the specific plan, alleged to have been entered into by the defendants and/or the unindicted co-conspirators, which gives use to the conspiracy alleged in the indictment.

In the interests of the fair administration of criminal justice and in the light of the proposed amendments to the Rules of Criminal Procedure the defendants make the following request with the understanding that in some cases there may be a duplication of requests. The following requests are made in the form Haec Verba in the interest of a literal compliance with the language contained in the aforesaid proposed amendments. The defendants are willing to participate in and abide by the Court rules of any "omnibus hearing" presided over by the Court.

- A. Statement of defendant. The defendants request the government to permit the defendants to inspect and copy or photograph any relevant written or recorded statements made by the defendants, or copies thereof, within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government; the substance or any oral statement which the government intends to offer in evidence at the trial made by the defendants whether before or after

Motions for Discovery and Bills of Particulars by Attorney Dante
M. Scaccia, in U.S. v. Cannone, et al., #74-CR-142, and in
U.S. v. Masciarelli, et al., #74-CR-144.

United States Attorney
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December 18, 1974

arrest in response to interrogation by any person then known to the defendants to be a government agent; and recorded testimony of the defendants before a grand jury which relates to the offense charged.

- B. Defendants' prior record. The defendants request that the government furnish to the defendants such copies of their criminal record, if any, as is available to the attorney for the government.
- C. Documents and tangible objects. The defendants request that the government permit the defendants to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the government, and which are material to the preparation of his defense or are intended for use by the government as evidence in chief at the trial, or were obtained from or belong to the defendant.
- D. Government witnesses. The defendants request that the government shall furnish to the defendants a written list of the names and addresses of all government witnesses which the attorney for the government intends to call in the presentation of the case in chief together with any record of prior felony convictions of any such witness which is within the knowledge of the attorney for the government.

Request, in order to afford an opportunity to move to suppress evidence, notice of the government's intention to use (in its evidence in chief at trial) any evidence which the defendants may be entitled to discover under Rule 16 subject to any relevant limitations prescribed in Rule 16.

In view of the time limitations set by the Court for the preparation, filing and service upon the United States Attorney, as well as copies to be filed with the Court, please forward the government's position on the foregoing requests in writing and furnish to the defense on or before the close of business, i.e., 5:00 P.M., Thursday, December 19, 1974. The defense does not intend to impose short-time limitations upon the government, however, in view of the Christmas holiday, secretarial service is at a premium and it is requested that we be notified as promptly as possible in order that the appropriate personnel may be assigned to do the necessary secretarial work involved in the preparation of motion papers should such become necessary.

Very truly yours,

LOVE, BALDUCCI & SCACCIA

By:

DMS:r1

Dante M. Scaccia

Motions for Discovery and Bills of Particulars by Attorney Dante M. Scaccia, in U.S. v. Cannone, et al., #74-CR-142, and in U.S. v. Masciarelli, et al., #74-CR-144.

United States Department of Justice

IN REPLY
PLEASE REFER
TO OUR FILE

UNITED STATES ATTORNEY
NORTHERN DISTRICT OF NEW YORK
FEDERAL BUILDING
SYRACUSE, N.Y. 13201

December 20, 1974

Dante M. Scaccia, Esq.
Love, Balducci & Scaccia, Attorneys
300 Wilson Building
306 South Salina Street
Syracuse, New York 13202

Re: United States -v- Cannone, et al.,
#74-CR-142
United States -v- Masciarelli, et al.,
#74-CR-144

Dear Mr. Scaccia:

In reply to your letter of December 18, 1974, please be advised that since your demands in both letters were identical (the same letter typed twice with different captions), I will respond with only one letter and unless otherwise noted, my response applies in both cases. Because you represent only Masciarelli and McGrath, I understand your references to "defendants" to refer to only Masciarelli and McGrath and, unless I note otherwise, when I refer to "defendants" herein, I mean only Masciarelli and McGrath.

"Items sought for discovery."

1. Masciarelli and McGrath did not testify before the grand jury.
2. The government will provide Mr. Scaccia with all statements made by the defendants Masciarelli and McGrath only.
3. Upon appropriate authorization from the Court

Motions for Discovery and Bills of Particulars by Attorney Dante**M. Scaccia, in U.S. v. Cannone, et al., #74-CR-142, and in****U.S. v. Masciarelli, et al., #74-CR-144.**

the government will provide Mr. Scaccia with a copy of those transcripts it has prepared for its use in this matter.

4. The government will provide Mr. Scaccia with any exculpatory evidence it has upon appropriate authorization from the Court.

5. The government will allow inspection by Mr. Scaccia of those tangible items of evidence seized pursuant to search warrants from the persons of Masciarelli and McGrath if anything, and from the premises wherein those two defendants conducted their part of this illegal gambling business.

Request for bill of particulars:

a. The government submits the indictment is sufficient in this regard.

b. The government will provide Mr. Scaccia with this requested information as it applies to defendants Masciarelli and McGrath.

c. The government will provide Mr. Scaccia with as specific dates as is possible.

d. The government opposes disclosure of this information except insofar as Masciarelli and McGrath are concerned and in that regard Masciarelli and McGrath did not receive immunity of any kind.

e. The government submits the indictment is sufficient in this regard.

Requests for discovery pursuant to proposed Rules of Procedure not now in effect:

The government opposes the use of any procedure not now in effect. Specifically, we respond as follows:

A. The government will provide Mr. Scaccia with any

Motions for Discovery and Bills of Particulars by Attorney Dante
M. Scaccia, in U.S. v. Cannone, et al., #74-CR-142, and in
U.S. v. Masciarelli, et al., #74-CR-144.

statements made by Masciarelli or McGrath which the government intends to use at trial.

B. The government will provide Mr. Scaccia with copies of Masciarelli and McGrath's criminal records, if any, as it has available.

C. The government refuses this request in its present form except insofar as covered by paragraph number 5 above.

D. The government refuses this request.

Very truly yours,

JAMES M. SULLIVAN, JR.
United States Attorney

Currie Welch
Currie Welch
Assistant U. S. Attorney

EW/vam

Transcript of Hearing on Discovery Motions,
1-13-75.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA, :
-against- : 74-CR-142
FRANK S. CANNONE, et al., :
Defendants. :
-----X

PROCEEDINGS in the above-captioned
matter, regarding Motions for Discovery and
Inspection, Bill of Particulars, Severance, et cetera,
held Monday, January 13, 1975, Syracuse, New York,
at the Federal Building, 10:00 A.M., before the
Honorable Edmund Port, United States District Judge.

Transcript of Hearing on Discovery Motions.
1-13-75.**APPEARANCES:**

THE HONORABLE JAMES M. SULLIVAN, JR.,
United States Attorney,
Northern District of New York,
BY: EUGENE WELCH, Assistant United States Attorney,
of Counsel.

HAROLD J. BOREANAZ, ESQ.,
Attorney for Messrs. Maruca & Rappucci.

DANTE M. SCACCIA, ESQ.,
Attorney for Messrs. Mascarelli & McGrath.

REMO A. ALLIO, ESQ.,
Attorney for Messrs. Cannone, Gaetani, Abbadessa,
Christina & Santacrose, Jr.

THE COURT: Mr. Boreanaz, did you have some motions here?

MR. BOREANAZ: Yes, your Honor.

MR. WELCH: Your Honor, I would request that your Honor, if you would inquire of Mr. Allio, on the day of arraignment, he indicated that he was representing Mr. Jon English for the purpose of arraignment. Obviously there was no motion or any indication of anyone representing Mr. English since that day. I don't know if it is just an oversight with Mr. Allio, or if that means that he is not representing him.

MR. ALLIO: I was under the impression that Mr. English might have been represented by an attorney known as Mr. Joe Scelsi, in our area. I received a communication from Mr. Scelsi to that effect.

Now, whether he actually is or not, I cannot say absolutely.

THE COURT: You have not been relieved, have you?

MR. ALLIO: No, I have not been relieved.

THE COURT: So that you presently are in the posture of a defendant who hasn't made motions, is that all?

Transcript of Hearing on Discovery Motions.
1-13-75.

MR. ALLIO: Yes.

THE COURT: All right.

I will hear you gentlemen in order.

I do not know the order in which you made your motion. If you can decide among yourselves who wants to be heard, go ahead.

The motions are all substantially alike, are they not?

MR. SCACCIA: I have seen a copy of Mr. Boreanaz' papers, and Mr. Allio sent a copy of his letter, and I sent him a copy of my letter. Perhaps, but who knows? I haven't seen all of the papers.

THE COURT: I will hear you, Mr. Scaccia, and I have read the papers.

MR. SCACCIA: If it please the Court, on behalf of the defendants Mascarelli and McGrath, --

THE COURT: Perhaps we can serve some purpose by doing this: I note that a good deal of the material requested, the government has agreed to supply. So that as to that material you need not address yourself.

If there is -- just let me know what the dispute is about. Let me know where the dispute lies.

Transcript of Hearing on Discovery Motions.
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MR. SCACCIA: I will get to that,
your Honor.

If it please the Court, as I understand the communications with the United States Attorney, the areas of dispute between the government and the defendants Mascarelli and McGrath, in the indictment in which Mascarelli and McGrath are involved, is with respect to the Grand Jury minutes, as I understand it. He would surrender them with appropriate court order. I don't know what those qualifications are.

THE COURT: Grand Jury minutes? I don't read it that way. I think that you are reading through your own glasses. I don't know -- is that what you said in your letter?

MR. WELCH: No, I indicated that we would provide defense attorneys with transcripts of their own Grand Jury clients' testimony but there are none for Mr. Mascarelli and Mr. McGrath. I think that the transcript that he is referring to, as to court authorization, would be those transcripts of conversations by electronic surveillance.

THE COURT: He just said Grand Jury in here.

MR. WELCH: The government has not agreed to submit any Grand Jury transcripts other

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than individual transcripts before the Grand Jury, and in the case of Mascarelli, there is none.

THE COURT: All right. go ahead.

MR. SCACCIÀ: Then we get to the electronic surveillance and I understand that the government, again, his Counsel just said that he is agreeable to furnish any information but with the court's permission and authorization, and we are respectfully asking for that.

THE COURT: I will direct that any electronic surveillance transcripts and the tape, they may hear the tape, themselves, of any electronic surveillance; all defendants may.

MR. ALLIO: May I ask a question, your Honor, with regard to this?

THE COURT: Yes.

MR. ALLIO: Does that mean that the defendants themselves can listen to the tapes?

THE COURT: Yes, you can bring them in. I think that it has a salutary effect, as a matter of fact, having them hear their own voices.

MR. WILCH: If your Honor please, if I might be heard on the transcript. The government has prepared quite a few transcripts of those conversations with the intent to use them at trial.

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It has not transcribed every single telephone conversation on the tape regarding this, although they will be made available. We did not intend to transcribe every single conversation.

THE COURT: You need not transcribe any of them if you don't want to. But as long as the tapes are made available, that is all.

MR. WELCH: Yes, your Honor.

THE COURT: Now, is that all?

MR. SCACCIA: The other area, your Honor, where we need Court direction with respect to the particulars involved insofar as the alleged conspiracy is concerned: On behalf of the defendants I represent, I feel that we need some particulars as to the type of a plan that the government is alleging, who was involved in that plan, when the plan -- where and when, and the time in which the plan was entered into, and the purpose or purposes for which it was entered into, and the acts in specific detail as to time and place and person as to any alleged acts in furtherance of that conspiracy. Also, related to that demand is more specific with respect to the particulars as to the State crime alleged. The government seems to take the position that they have alleged sufficiently in the indictment as to the State

crime alleged --

THE COURT: Well, the State crime was doing business, isn't it, as a bookmaker?

MR. SCACCIA: We need specifics as to the time and place and persons and where it was conducted.

THE COURT: All right.

MR. SCACCIA: And other details of that nature. From that point I can move swiftly to the portion of the motion, if the Court wishes to hear me, with respect to the portion of the motion having to do with the severance, since I represent Mascarelli and McGrath.

One of the counts of the indictment is with respect to Maruca, I believe, and Christina, insofar as the allegations of beating up a witness who had testified before the Grand Jury.

I feel that it would be highly prejudicial if a trial were held with all defendants, including all three of those, that in counter respect to only two of some eleven or twelve defendants having anything -- at least allegedly having anything to do with the beating up of the witness, I think would be highly prejudicial to the balance of the defendants and I think that in the interests of justice that that

count ought to be severed both as to the trial, as well as the persons, and they be tried separately so it is not prejudicial to the balance of the defendants having to do with gambling counts.

THE COURT: Anything else?

MR. SCACCIA: No, all right.

THE COURT: Granted.

MR. SCACCIA: I had made a demand for the witnesses, and the government has refused and I don't know of any authority that entitles me to pursue that. I don't know of any authority that I can cite to the Court.

THE COURT: Go ahead.

MR. ALLIO: I would just like to urge the Court again to, as far as the severance of the third count is concerned, I represent Mr. Christina. And Mr. Christina is not named in either of the other counts. He is not named in the conspiracy count of the gambling, or named in the subsequent act.

THE COURT: He is just involved in the alleged interference or obstruction of justice, or interfering with the witness, or whichever that is?

MR. ALLIO: Yes, I think that it would be burdensome and prejudicial to him to listen to a

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transcript and the telephone conversations of evidence of gambling and things of that nature, when he has nothing to do with it.

THE COURT: He takes the other view. He doesn't want to be tied up with these fellows?

MR. ALLIO: No, he does not.

THE COURT: He does not want to be part of them and they don't want to be part of him?

MR. ALLIO: That is right, and secondly, I made a very serious application to this Court to allow Mr. Anthony Santacrose, Jr. to be subjected to a polygraph test.

THE COURT: I remember that. I enjoyed the ingenuity.

MR. ALLIO: It isn't a matter of ingenuity.

I think that there is a precedent and I would like to prepare that. I am not prepared this morning.

THE COURT: This morning is the time to be prepared. But certainly there cannot be any authority that would hedge it with the hedges that you have circumscribed the requests with, or the requirement that I compel it. I don't know how I could compel this sort of a thing or to compel the

government to be bound. I can't tell them how to investigate their case.

MR. ALLIO: Here the government is taking very serious charges against a person and he is willing to take a lie detector test.

THE COURT: But what you are telling the government to do: Let's get rid of this whole process of justice that we have, and juries, and cross-examination, and all of this time-tried method of determining what the truth is, and substitute this machine for it.

Now, we know that there are some people that, because of their physical and emotional make-up, are going to react to that machine when they tell the truth. There are some people that are so accomplished as liars, that they can subject themselves to that machine without causing the least quiver in its needles, and up to this juncture, I know of no case in Federal court, and certainly not in this circuit, that would permit or require such evidence to be adduced.

Now, I don't think that it would serve any purpose to pursue that.

MR. ALLIO: Another matter, your Honor, is that there is nothing in the indictment,

and we would like to have it set forth in the Bill of Particulars as to all of the relevant materials as to how Mr. Santacrose entered into this conspiracy, and what his overt acts were as part of the conspiracy, and with whom.

THE COURT: Does Mr. Santacrose need -- well, need there be any overt act? Each conspiracy need not have an overt act proved against him, need he? All of us in this room could be responsible conspirators and be convicted on Welch's overt act, alone. I could be the only overt actor. He is our partner.

MR. ALLIO: But we would have to have a basis as to where it took place and the extent of the conspiracy.

THE COURT: That is a matter of evidence, and that is what the trial is for.

MR. ALLIO: We would like some more particulars about that so that we would be in a position to defend.

THE COURT: I cannot blame you for that.

MR. ALLIO: I think that they have agreed to give us most everything else that we have requested. That would be about all I have to say.

THE COURT: Next.

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MR. BORLANAL: Taking any of the moving papers, your Honor, and dealing only with those aspects that appear to be alleged in some degree of conflict, it would appear that my request, No. 1, No. 2., No. 3, they are in the process of being complied with by the United States Attorney's office.

Addressing myself, then, to Request Nos. 4 and 5, I have asked for a complete discovery and inspection pursuant to Rule 16, and an order directing that the United States Attorney disclose whether the Grand Jury proceedings in this indictment have ever been transcribed, and if so, directing that the same be provided to the defense Counsel.

Now, combining both of those requests which the government has refused to comply with, your Honor --

THE COURT: Whether they have been transcribed or not is of no moment, is it? If they are not transcribed -- if any witnesses are used and the government is unable to produce the Grand Jury testimony, if it should be appropriate material, of course, then it probably would arise, and I have had it arise in that context, but until then, I don't know that the defendant is concerned. What difference does it make whether it has been transcribed?

MR. BOREANAZ: I couple that request with a request in No. 4, for discovery, under Rule 16, and the government's answer is that they need more specificity, and I would be glad to be more specific at this time.

Pursuant to Rule 16-B, your Honor, and pursuant to the authority of the case of the ⁷ United States versus Williams, which is a case as yet without citation, decided on December 14th, the last order entered in that case by Judge Oliver in the Western District of Missouri, and very briefly I would like to outline the circumstances of that case, your Honor, so as to put into perspective the nature of the request that I now make to the Court.

That case, your Honor, apparently involved an indictment returned by what is properly referred to or called the Strike Force, or Special United States Attorney personnel.

In that case, it is a part of an attack upon the indictments that the defense requested that certain material be provided to them including the names of the United States -- the Special United States Attorneys that appeared before the Grand Jury and procured that indictment, and the point at which

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they have procured the authority to so act, and under what authority they acted, and the oath of office that had been administered to them, and generally falling into the question of the entire structure of the authority of so-called Special United States Attorneys to act in the respective districts in which they purport to function.

The District Judge ordered that the government produce the material in question, and the government refused, whereupon the District Judge entered an order of dismissal of the indictment.

The case is --

THE COURT: I would be obliged to say at this point in your recital that I think that I would be obliged to respectfully differ with the District Judge, and I think that he acted a little precipitously because it isn't the Grand Jury minutes that would show the authority.

I assume that there was no question, for instance, that in this case that a member of the so-called Strike Force, probably, appeared before the Grand Jury. I don't know whether anyone other than the regular Assistant United States Attorney appeared here or not.

MR. BORHANAZ: Nor do I. I wish to be

informed in that area so that I may appropriately follow the line set forth in that case.

THE COURT: But that would be to the presence of an unauthorized person, is that what you are getting at; the presence of an unauthorized person?

MR. BOREANAZ: That is right.

THE COURT: On pure speculation, I would not order the Grand Jury minutes transcribed and examined for that purpose. I suppose that there is always that possibility that a custodian or anyone else monitors the Grand Jury room, but they are in charge of a Marshal who I presume -- I would be obliged to operate on the presumption that he is performing his duty, which is to see that the Grand Jury operates in secrecy, and that there is no more than one witness present at any time.

MR. BOREANAZ: Will your Honor direct the government here to advise the Defense Counsel as to whether this was a regular United States Attorney, afforded in a regular course that produced the evidence that resulted in this indictment herein, or was it a special or task force attorney so that we might pursue this issue? I have no way of knowing that.

THE COURT: Yes, I will direct that that be done, that the United States Attorney answer whether or not this evidence was presented at any time by anyone other than a regular United States Assistant or regular Assistant United States Attorney or the United States Attorney for the Northern District of New York.

MR. BOREANAZ: Thank you.

Now, passing on to the next order in my moving papers which would be No. 6, and in that instance I have joined in the application to sever the third count. I point out to your Honor that I represent both the defendant Rappucci and Maruca. Maruca is a defendant in all three counts, and Rappucci is a defendant in Counts 1 and 2.

I would simply point out to your Honor that 1 and 2 are the gambling counts and one being a substantive count, and the other being a conspiracy count, and they allege a crime commencing on or about October 24th of 1970, and running -- I am sorry, your Honor -- commencing on or about January, 1974, and running up until June 17th of 1974.

The allegation in the third count, which deals with the so-called "intimidation" of

the government witness, occurs according to the indictment on the 24th of October of 1974, a period of several months after the terminal date of both the substantive and conspiracy counts as alleged in Counts 1 and 2, and inasmuch as Mr. Maruca is a defendant in both Counts 1 and 2, I submit to your Honor, that he, having joined in the motion to sever, that it would be proper and appropriate for the Court to sever the third count of the second count of this indictment.

THE COURT: All right, Mr. Welch?

MR. BOREANAZ: I have a few more.

I have other issues. May I proceed with the others?

THE COURT: Yes.

MR. BOREANAZ: Your Honor, in No. 7 of my request, I asked your Honor to hold on that motion wherein I requested a severance, of Counts 1 and 2, simply on the ground that we do not have sufficient information to provide to your Honor until the other requests that we have made, that the Court is either ordered to --

THE COURT: Wait a minute. You are talking about a severance of Count 1 and 2?

MR. BOREANAZ: That is correct.

THE COURT: You are talking about a

severance of Count 1 and 2 from Count 3, or are you now chopping it up into three parts?

MR. BOREANAZ: I am seeking to break it into as many parts as possible, your Honor.

THE COURT: Well then, what you are asking me now is that you want Count 1 tried separately, Count 2 tried separately, and then Count 3 --

MR. BOREANAZ: Yes, as to each defendant.

THE COURT: As to each defendant?

MR. BOREANAZ: As to those that I represent.

THE COURT: How many defendants are there altogether? Of course, if your defendants are entitled to it, I suppose that they all are?

MR. BOREANAZ: That would not necessarily follow, your Honor.

THE COURT: It wouldn't necessarily follow, but I think in fairness it would almost dictate it. How many defendants?

MR. BOREANAZ: I believe that there are 13, your Honor.

THE COURT: And we have three counts, and that would be 39 trials? All right, I understand.

MR. BOREANAZ: That appears at least on the basis of it, reduced by my argument, to be ridiculous, but I do not intend --

THE COURT: I would say that it does. I would say that your clients would even run out of money.

MR. BOREANAZ: We would face that problem when and if it arose, your Honor.

But if my request is received it will be held until such time as I have had a full and complete discovery or disclosure by the government here as to the other requests, inasmuch as there may be some problems of that, that are lurking in the proof that might actually justify some form of relief as to one or more of these defendants by way of severance, and certainly not necessarily to all.

I think that the same is true, your Honor, with respect to my request to dismiss this indictment under Item 9 --

THE COURT: This is the usual procedure that arises, isn't it, in connection with the prosecution of conspiracy, and the substance of the defense encompassed by this conspiracy, isn't it?

MR. BOREANAZ: Yes, your Honor, to some extent.

I simply ask you to hold the ruling on that motion until such time as I have had an opportunity to listen to the tapes, and to examine in full the others that the government is going to present. I may choose to withdraw that application.

THE COURT: If I deny it, it won't be necessary to withdraw it, and if I deny it, and the circumstance or circumstances make it necessary in the interest of justice to have a further settlement, I don't think that the Court is deprived of that authority, do you?

MR. BOREANAZ: No, not at all.

THE COURT: I don't see any purpose for anything further, except to just make more paper work, and we have enough of that now.

MR. BOREANAZ: Well, your Honor, under No. 10 of my moving papers I have requested that the Court direct the government to supply me with all -- with copies of all documents and diagrams and photographs, et cetera, which they intend to offer in evidence to a simple discovery motion, and at least if I correctly understand the government's

response, they seek to limit that which they will provide me to scientific testing only. I don't know that there is any scientific tests, and I submit that what they are offering to provide me with is nothing. I think that I am entitled to see any physical tangible evidence that they intend to offer into evidence, at least before the trial commences.

THE COURT: All right.

MR. BOREANAZ: Your Honor, the government says that they oppose my request No. 11 which is a simple request for an evidentiary hearing to determine the admissibility of any and all evidence that they might present here and again, your Honor, I won't know as to whether such would be necessary until they have complied with the other requests.

For example, they have indicated that they will provide me with copies of any admissions or statements that they claim that my client has made. They say that they will give me the wiretap materials and I don't know as to whether I can challenge the admissibility of any of those until I have been wholly advised as to their content.

Also in that area, your Honor, I have requested here that if there are any admissions made by any defendant, that I be given an opportunity to

see those pre-trial. The government's contention is that they will show me only that which they say came from my client, and I submit, your Honor, in a multiple-defendant trial, I have no way of anticipating what evidence is going to adversely affect my client by way of some alleged admissions on pre-trial. I am entitled, it seems to me --

THE COURT: Do you have any authority on that? It seems to me that the Second Circuit authority is on that. It is interesting to listen to these arguments, and I am sure that they have been made before. It would be much more enlightening if I was supplied with some authority. Do you have any authority?

MR. BOREANAZ: Not at this time, your Honor.

THE COURT: Then your argument bears little weight.

MR. BOREANAZ: But, your Honor --

THE COURT: You are here to argue this morning, and this is the time to have your authority.

MR. BOREANAZ: So far as my requests for a Bill of Particulars --

THE COURT: I think that the Court is

entitled to some consideration, too.

MR. BURLANAZ: So far as my request for a Bill of Particulars is concerned, I stand on my moving papers, and I stand on the written request that I have made that the government has refused to comply with.

THE COURT: All right.

I think it is time that lawyers felt that the Court was entitled to some kind of consideration, that they are entitled to more than speculation and arguments from Counsel. That Counsel, when they come into the Court, should be prepared with authority.

Now, on this last proposition I am certain that authority exists just to the contrary. The Court is not the only one that is supposed to be looking up law.

All right, Mr. Welch.

MR. WELCH: If your Honor please, the several areas of disagreement here can boil down to, I think, two or three. The first being severance, your Honor.

We strenuously oppose severance of any of the defendants from the gambling and conspiracy count, your Honor, as well as the severance of

Count 3 from Counts 1 and 2. Although it is true that Mr. Christina was not charged in the gambling and conspiracy counts, Mr. Maruca was. There will be a duplication of some testimony from both trials, your Honor, as it is obvious that Mr. Bontempo was the victim witness and will be called from out of town to testify at the trial of this matter, your Honor.

THE COURT: I suppose that as far as Maruca was concerned, if he should testify, of course, that would probably be proper cross-examination as to his credibility. I don't know, maybe we might have some other use. Would this testimony affect the government on its direct case in the conspiracy of the substantive counts?

MR. WELCH: Which testimony?

THE COURT: The testimony concerning this influencing of a witness?

MR. WELCH: I am sorry, I don't understand your last question.

THE COURT: What I am getting at: This last count is in the nature of what, influencing and intimidating the witness?

MR. WELCH: He was beaten in October, after his testimony before the Grand Jury

investigating the gambling counts.

THE COURT: Now, in reference to the substantive offense charged under 1955, in reference to the conspiracy charge; what, if any, bearing does the testimony of the third count have on the direct case, the government's case in chief?

MR. WELCH: A testimony as to beating, your Honor, I don't believe, will have any bearing on the gambling case.

THE COURT: It won't?

MR. WELCH: No, your Honor.

THE COURT: So that assuming that the defendant doesn't take the stand, we wouldn't get into that issue? Now, if Maruca were to take the stand, or if the witness were to be cross-examined in subsequent statements, maybe it might come up in cross-examination of either the witness or Maruca, but you might go through an entire trial without any mention being made of any of the circumstances surrounding the intimidation.

MR. WELCH: May I be heard on that, your Honor?

THE COURT: By the absence of the intimidation count being tried by the other two, wouldn't that?

MR. WELCH: But you cannot go through the obstruction of justice without getting into the evidence of the illegal gambling business and you will have a repetition of the gambling business testimony at the obstruction of justice trial, although maybe not vice versa.

THE COURT: That is what I am getting at.

MR. WELCH: And you will have to recall witnesses from out of town to testify on Count 3 as you do for 1 and 2. I am not sure on all of these yet. It is a matter of mechanics.

Secondly the Bills of Particulars that have been demanded of Mr. Allio, he has made a demand as to Count 3 of the obstruction of justice charge, your Honor, which was an incident that happened on the day certain, your Honor, and the particulars as to that incident, approximately perhaps not down to the exact minute, can certainly be provided and will be provided, your Honor.

But Counts 1 and 2 charge an illegal gambling business continuing from January to June, your Honor, of an illegal bookmaking business for that entire period of time, your Honor, and substantially a continuing operation in excess of 30 days, to wit, from January to June.

Transcript of Hearing on Discovery Motions.
1-13-75.

And if your Honor please, our position is that this indictment is specific and any more details would probably be impossible to provide in more exact details. So that is why we oppose that demand for particulars as to the illegal bookmaking operation.

As to tangible evidence, your Honor: We have opposed Mr. Boreanaz' demand in the present form because it seems to me that what he has asked for is: Government, you open up your file to us, your Honor, and without something shown more particular, we oppose this in its present posture.

That is, I think, the three general areas of disagreement here, your Honor.

THE COURT: All right, gentlemen: The discovery and particulars motions for discovery and particulars are granted to the extent that they have been supplied by the government. And in addition, the government is directed to permit the defendants to hear the tapes of the interceptions, any interceptions, and Count 3 is severed for trial from Counts 1 and 2.

Government's Counsel is directed to submit an order.

MR. ALLIO: May I be heard, your Honor?

THE COURT: Yes.

MR. ALLIO: Am I to assume that we are not entitled to know when and where the alleged illegal actions took place as far as Santacrose is concerned?

THE COURT: You are to assume that the order has been granted in the form that I have just granted it.

MR. SCACCIA: I have a question.

Before I came over this morning I picked up the mail that had been delivered, and there is a notice for trial of this matter. I think that the call is January 31st, and --

THE COURT: We cannot hear you.

MR. SCACCIA: This morning I just picked up the mail that reached our office, and there is a notice moving these cases for call on January 31, at Utica, and I take it that the government is moving these cases for trial.

As a practical matter, I think that we ought to be given a reasonable opportunity to be provided with the material that the Court has directed, bearing in mind that he has not provided any of the material, even that in which he has volunteered.

THE COURT: How long will it take you to provide this? Ten days?

Transcript of Hearing on Discovery Motions,
1-13-75.30

MR. WELCH: Approximately, yes.

Your Honor, as a practical matter, this case is about No. 18 on the calendar, and I have a net worth case that will take two or three weeks.

THE COURT: We never know how long the call will be. It will be a two- or three-week trial, and it can also take as long as it takes to say, "I plead guilty," and this material is to be provided within ten days.

MR. SCACCIA: Thank you, your Honor.

MR. WELCH: If your Honor please, may we request a similar discovery order that may be made applicable to John English?

THE COURT: It applies to all defendants, on the motions.

MR. WELCH: He didn't file any.

THE COURT: I fixed a time for motions, and he has waived. He is here by Counsel, and his Counsel hasn't done anything.

MR. SCACCIA: I do have another question with respect to the other indictment involving Mascarelli and Schultz from Ohio. I understand that Schultz still has not been arraigned, and I would ask the Court that that case not be moved for trial until it is ready for trial.

Transcript of Hearing on Discovery Motions.
1-13-75.31

including all of the arraignment proceedings.

THE COURT: I don't know anything
about that. They tell me that this is only Mascarelli.

MR. SCACCIA: And I take it that he
would not be put on the call?

THE COURT: All right.

(Whereupon the proceedings were
closed.)

Transcript of Hearing on Discovery Motions,
1-13-75.

R E P O R T E R ' S C E R T I F I C A T E

I, Hiram F. Sheffer, Jr., Official Court Reporter for the United States District Court in and for the Northern District of New York, do certify this to be a true and accurate transcription of the stenographic notes as made by me during the aforesaid proceedings.

Hiram F. Sheffer
Official Court Reporter
United States District Court

Albany, New York

April 8, 1975

Transcript of Calendar Call of 1-31-75.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

FRANK S. CANNONE, etc. &
RAYMOND D. MASCIARELLI et al

74-CR-142 74-CR-144

APPEARANCES:

HONORABLE JAMES M. SULLIVAN
United States Attorney
GEORGE H. LOWE
Assistant United States Attorney
Of Counsel
Attorney for U. S. of America

DANTE M. SCACCIA, ESQ.
Attorney for Masciarelli & McGrath
Syracuse, New York

MR. LOWE: Your Honor, all defense counsel in this matter have submitted, I believe, written applications to the court to have the case put over the term, and the basic thrust of the facts are correct because of Mr. Welch's illness.

Pre-trial discovery in this matter has not been able to go forward and I believe we are going to be able to get at it within the next couple of weeks, but it is complex and the Government is opposing the application.

THE COURT: Off.

MR. SCACCIA: May I make one request, that none of this time be charged against the defendants,

because we were under very severe time limitations set by Judge Port at the time of the arraignment, and all defense counsel met those time limitations carefully and realistically and we don't feel this time should be --

THE COURT: I don't feel I should pass on that. I will defer that to the trial.

MR. SCACCIA: O.k.

MR. LOWE: The same situations is true with regard to number 22, Your Honor.

MR. SCACCIA: May I add one thing. There is an additional defendant, Masciarelli, in case 22, I think his name is Schults. Insofar as I know he has not been arraigned and I think perhaps he ought to be before that case is presented by the Government, it is a joint indictment --

THE COURT: That is up to the Government, I suppose, and the trial judge.

MR. SCACCIA: And there is another matter I should point out to Your Honor. Back in the Cannone case Judge Port after motion had severed Count III of the indictment. I don't know whether Mr. Lowe is aware of it. He may not be because he wasn't in charge of the case, but we had moved Count III be severed from the balance of the two counts, and I

Transcript of Calendar Call of 1-31-75.

point that out in the interests of justice.

THE COURT: I suppose there would be some docket entry to that effect?

MR. SCACCIA: There was, but the U. S. Attorney was supposed to prepare the order.

MR. LOWE: Because of Mr. Welch's illness I have begun a draft of that order and I hope it will be prepared this afternoon.

THE COURT: All right.

* * * * *

This is to certify that the foregoing proceedings took place on the 31st day of January 1975, at the United States District Court, Federal Building, Utica, New York, before HONORABLE LLOYD F. MacMAHON, United States District Judge.

Master L. Miller

Official Reporter

Transcript of Calendar Call of 3-4-75.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA,

- against -

74-CR-142

FRANK S. CANNONE, STANLEY A. REPUCCI,
THOMAS A. GAETANI, JON N. ENGLISH,
JOSEPH N. MARUCA, VINCENT N. CHRISTINA,
A. R. SANTACROSSE, JR., RAY D. MASCIARELLI,
JAMES W. MC GRATH, THOMAS J. ABBEDESSA,
and ANDREW J. GUINLAND.

-----x

UNITED STATES OF AMERICA,

- against -

74-CR-144

RAYMOND D. MASCIARELLI.

-----x

The above-entitled matters came on
for Calendar Call, on the 4th day of March, 1975,
at 9:30 A.M., in the United States Courthouse,
Albany, New York, before HONORABLE JAMES T.
FOLEY, District Judge.

A P P E A R A N C E S:

THE HONORABLE JAMES M. SULLIVAN, JR.,
United States Attorney, Federal Building, Syracuse,
New York, By: WILLIAM J. DREYER, Assistant United
States Attorney, Of Counsel.

- and -

DANTE M. SCACCIA, ESQ., Attorney and
Counsellor at Law, 300 Wilson Building, 306 South
Salina Street, Syracuse, New York, Attorney for
Ray (Raymond) D. Masciarelli and James McGrath.

THE COURT: Proceed.

MR. SCACCIA: I appear for the Defendants Masciarelli and McGrath. Also on the second, 74-CR-144 I appear for Masciarelli, alone.

However, I am authorized to speak for all of the Defense Counsel in the indictment, No. 74-CR-142, and I would like to make a statement to the Court to that effect.

If it please the Court, following the indictment in November of 1974, and pursuant to notice of all Defendants and their Counsel, the Defendants were all arraigned before Judge Port at the Auburn Session on December 10th, 1974. At that time and place, and by order of Judge Port, all motions were to be made on behalf of the defense, particularly discovery motions, were to be made and filed with the usual copies of the notices, to the Government Counsel, and the Clerk, and copies of all pleadings were to be in Judge Port's chambers at Auburn on or before December 24, 1974.

That is, we were given a two-week period just prior to Christmas in which to make all of our motions.

Those motions were, indeed, made and they

were returnable early in January before Judge Port at Syracuse; before Judge Port at Syracuse, your Honor.

They were made, and they were filed, and they were argued, and the Court decided, on the same day, the day of the argument, and among other things the Court ordered extensive discovery to be provided to the defense by the Government.

Moreover, there was a motion with respect to a severance of, I think, two of the Defendants from the main indictment, Judge, with respect to one count. There was a Count 3 involving intimidation and beating up of a witness involving only two Defendants, and not in any way related to the balance.

In short, Judge Port, after argument, following argument severed that count, Count 3 from the Count 1 and 2 of the indictment.

THE COURT: Which indictment, and which Defendants?

MR. SCACCIA: That would be on 74-CR-142, Judge, and it is the Defendants --

THE COURT: There were several counts severed?

MR. SCACCIA: No, one count. This was a

three-count indictment and there were about eleven Defendants.

THE COURT: There was one count severed against several Defendants?

MR. SCACCIA: Yes, and moreover, the Government was instructed by the Court at that time and place to prepare the order, in view of the fact that although it was not the prevailing part, that much of the documentation as to the wiretap, the logs, and the informants, and that sort of thing was best known to the Government, and not in possession of the defense, and therefore they were in a better position to itemize the materials in the proposed order.

That proposed order was to be prepared by Government Counsel within ten days, and submitted to the Defense Counsel for their inspection, and possible objection, with a copy going to the Court.

Judge, to this day, none of that has been done; absolutely nothing has been done by the Government except making a motion at the January Term, on January 31st, not having complied in any way with Judge Port's directions, despite repeated requests by Counsel and letters and

calls by the like, and no responses from the Government of any kind, either telephonic, or letter, or by motion papers --

THE COURT: Mr. Welch is the Attorney, and he is generally very responsible about his work from my experience.

MR. SCACCIA: I am coming to that point very quickly.

The Government moved the case for trial at the Utica special trial section on January 31st, before Judge MacMahon. At that time the Assistant United States Attorney George Lowe, on the record, made -- and I will try to recall it the best I can, the substance of his remarks -- he made a statement to the effect that, number one, that Mr. Welch had been ill; that he, George Lowe, had taken over the case; that he could state for the record that none of the delay was chargeable to or attributable to the Defense, and it was entirely the Government's delay; and that moreover that he, George Lowe, and the Government would proceed promptly to comply with the preparation of the proposed order that had been ordered by Judge Port; and moreover it would begin to assemble and document all of the discovery materials and

proceed with dispatch.

To this day, Judge, we have heard nothing further, except this portion or this notice, or whatever, moving the case for trial, despite the fact we have a lawyer in Pennsylvania representing the Defendant who is trying to contact the Government. We have a lawyer in Buffalo representing several Defendants, and we have heard nothing.

THE COURT: What is the answer?

MR. DREYER: Mr. Welch was in contact with our office yesterday and indicated that he was now trying to accomplish the Order of the Court regarding discovery. He pointed out that he was ill during that period when the case was being reassigned to another attorney, and nothing was done regarding discovery.

However, he has indicated that he, the Government, is now ready and that he is trying to accomplish discovery as rapidly as possible.

That is the only explanation that I have concerning that.

THE COURT: What status does it put the trial in?

MR. DREYER: One other matter that should be brought out is that Mr. Welch has received

communications from a Mr. Boreanaz, and Mr. Allio, who apparently -- and also a Mr. DeSisti, who have indicated to him that they want that case put over to the Auburn Term.

THE COURT: Do you want it put over?

MR. SCACCIA: I am not moving the case to be put over until one matter is settled, Judge, and that is something that Judge MacMahon suggested that we take up with the local judge, since he was up from New York City, and that is that none of this delay in time can be attributed to the Defense.

Moreover, the Government has made a statement, and I omitted it in my earlier remarks: Almost immediately after arraignment, and before complying with Judge Port's order with respect to discovery and the like, they filed a statement with regard to readiness. I, for one, cannot understand how the Government can make a statement on the record, or off the record, that they are ready for trial in this case when they have failed to comply with the Court's Order, and I respectfully submit that all of the time, from at least the time that Judge Port set a date, I think it was a ten day date in which an Order was

to be filed with his Honor, and copies to the Counsel, at least that from that date none of the delay in time be attributable to the Defense.

THE COURT: What is your computation? You are building up to have this dismissed?

MR. SCACCIA: I certainly am. I have made no secret on it previously.

THE COURT: You should be careful. Judge Port knows all about this and he knows more than I will ever know about it. I think it should be brought on before Judge Port, and he has a motion day next week, and put all of these cases on for him to decide whether they should be tried promptly, and what disposition he wants made, because it is up to him to find out this time computation.

Mr. Welch will be able to go in, in Syracuse. He is there and working.

So, March 10th, on the Judge's motion calendar, put these cases on to hear Mr. Scaccia tell what he just told me.

MR. SCACCIA: I think that that is very equitable.

Is there some way that we can have coordination? The United States Attorney claims that

It is the Clerk's Office that moves these cases for trial, and not them, and I know that the Clerk's Office is probably under some standing rule, and I think that there is some problem of communications. Why should I have to come here and drop a trial, that I have in Utica, and go back to Syracuse and pick up a file and come here because I happen to be the lawyer closest of all of the Defense lawyers, and I got elected.

THE COURT: What do you want to do?

MR. SCACCIA: I am suggesting the aide to the Court Clerk to direct the United States Attorney to be very careful about its file.

THE COURT: I will leave that to Judge Port, and let him direct everybody on what to do in the case. I don't know what to do about it. I will let Judge Port decide on that.

MR. SCACCIA: Thank you.

THE COURT: This should be brought on, and Judge Port should be informed about this situation, and the statement about the lack of coordination, and all of the other things he said here. The record here should be transcribed and given to Judge Port.

MR. SCACCIA: I didn't realize, and I

thought that we were talking about both cases in which we have common Defendants, and which I represent Mr. Masciarelli in the second one. The same remarks I just made apply equally, and more so, because to this date, Judge, the Defendant in indictment 74-CR-144 hasn't even been arraigned, insofar as I know, and I have checked Ohio, and I have stopped at the Clerk's Office last Thursday, the Federal Clerk's Office in Utica, and there is no record at all of an arraignment or any Rule 20 Procedure involved.

So, as far as I know, a principal Defendant in that case has not been arraigned, although he has been indicted.

THE COURT: As to Mr. Welch's case, as far as I am concerned, Mr. Welch is responsible, and I know he has been sick, and those things have to be given consideration, and Mr. Scaccia, you can take the matter up before Judge Port.

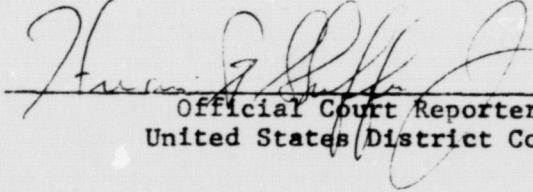
I am directing that these minutes be transcribed, to enlighten Judge Port about what is coming before him, particularly your charge about the lack of coordination and so forth, and to the Attorney's office and the Clerk's Office.

Transcript of Calendar Call of 3-4-75.

This is held, subject to Judge Port's
ruling.

R E P O R T E R ' S C E R T I F I C A T I O N

I, Hiram F. Sheffer, Jr., Official
Court Reporter for the United States District
Court, in and for the northern District of New
York, do certify this to be a true and accurate
transcription of the stenographic notes as made
by me during the aforesaid proceedings.



Official Court Reporter
United States District Court

ALBANY, NEW YORK

MARCH 5, 1975.

Letter from Attorney Edgar C. NeMoyer, dated 3-6-75.

BOREANAZ, NE MOYER & BAKER
 ATTORNEYS & COUNSELLORS
 736 BRISBANE BLDG
 BUFFALO, NEW YORK 14203
 (716) 854-5800

HAROLD J. BOREANAZ
 EDGAR C. NE MOYER
 PATRICK J. BAKER

JACOB A. LATONA
 (1897-1970)
 EDWARD K. O'SHEA
 (1924-1974)

March 6, 1975

Hon. Edmund Port
 United States District Judge
 United States District Court
 Auburn, New York 13021

Re: United States vs. Cannone, et al
 Criminal #74-CR-142

Dear Judge Port:

This is to advise you that our firm has now been retained by Frank S. Cannone, Stanley A. Reppucci, Thomas A. Gaetani, Joseph M. Maruca and Thomas J. Abbedessa in the above matter. Mr. Boreanaz of this firm, who previously appeared before you with regard to Messrs. Reppucci and Maruca, is presently trying a murder case in Supreme Court here before Justice Marshall.

We have discussed the matter at some length with Mr. Eugene Welch of the United States Attorney's Office. We have advised him, on behalf of the above defendants, that we are not now ready for trial and further advised him that we would be requesting you to adjourn the matter so that we may properly prepare.

I understand that this matter is scheduled to be before you this coming Monday, March 10th. We are hereby requesting an adjournment.

Respectfully yours,

BOREANAZ, NE MOYER & BAKER

EDGAR C. NE MOYER

ECN:rm

CC: Joseph R. Scully, Clerk
 James M. Sullivan, Jr., United States Attorney
 Remo A. Allio, Esquire
 Michael J. DeSisti, Esquire
 Danten Scaccia, Esquire

Letter from Attorney M. J. DeSisti, dated 3-6-75.

March 6, 1975

Honorable Edmund Port
U.S. District Court
Federal Building
Auburn, N.Y.

In re: Cannone (Quinlan)

Dear Judge Port:

I have been advised that the calendar call has been scheduled for March 10, 1975 pertaining to above referenced.

In view of the fact that I have not received any of the discovery materials from Attorney Welch, because of circumstances of which I am sure you are familiar, it is hereby requested that the said matter be continued until we have all available information so that we may properly prepare the case.

Further, I am now in Florida and expect to return March 17, 1975. However, if my presence is required prior to this date, I would appreciate it if you would advise my office and I will make plans accordingly to be present.

Very truly yours,

M.J. DeSisti
by

MJD/meh
cc: Eugene Welch
Clerk of the Court
Syracuse, N.Y.

Letter from Attorney Remo A. Allio, dated 3-6-75.

REMO A. ALLIO

ATTORNEY AT LAW

19 WASHINGTON AVENUE P.O. Box 88
ENDICOTT, NEW YORK 13760

748-1511

March 6, 1975

Hon. Edmund Port
United States District Court
Northern District of New York
Federal Office Bldg.
Auburn, New York 13021

Re: U.S. vs. Cannone, Santacrose, et al Indict. No. 74-CR-142

Honorable Sir:

I have been informed by Eugene Welch, that Dante Scaccia, an attorney for a defendant in this case, was in Albany on the 5th of February and made some objections to the delay in this case.

I can understand and appreciate the delay in view of the fact that Eugene Welch has been ill and he and I discussed this matter on the telephone when I discovered that the Clerk had placed the case on the calendar in Albany for the purpose of setting a trial date and Mr. Welch assured me that he would give the attorneys an opportunity for all the discovery proceedings before he would move the case for trial and that the case would not be unnecessarily delayed and he and I tentatively agreed that this case could not possibly be tried for at least two or three months.

I can find no great annoyance nor any great impropriety in this delay in view of the fact that Mr. Welch was ill and although I do not know too much about federal practice, I certainly am not going to make any complaint about any delay, and, as a matter of fact, it is my opinion, which, together with 35¢ will get me a ride on the subway, that this case is not going to go to trial until September of this year, because there are many and various things to do and many attorneys involved.

Very truly yours,

Remo A. Allio
REMO A. ALLIO

RA:lg

Transcript of Further Hearing on 3-10-75.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-X

UNITED STATES OF AMERICA,

: Criminal No.
- against - 74-CR-144

:

RAYMOND D. MASCIARELLI
LAWRENCE SCHULTZ,

:

Defendants.

:

-X

UNITED STATES OF AMERICA,

: Criminal No.
- against - 74-CR-142

:

FRANK S. CANNONE, et al.,

:

Defendants.

:

-X

The above-entitled actions came on
for motions at Syracuse, New York on the 10th day of
March, 1975, before Honorable Edmund Port, United States
District Judge for the Northern District of New York,
commencing at approximately 10:00 a.m.

APPEARANCES:

HONORABLE JAMES M. SULLIVAN, JR.,

United States Attorney for the Northern District of
New York, Federal Building, Syracuse, New York, by:
EUGENE WELCH, ESQ., Assistant United States Attorney.

DANTE N. SCACCIA, ESQ., Attorney for
Defendants Masciarelli and Schultz, Wilson Building,

Transcript of Further Hearing on 3-10-75.

APPEARANCES (Continued) :

Syracuse, New York.

Transcript of Further Hearing on 3-10-75.

P R O C E E D I N G S

THE CLERK: United States of
America versus Raymond D. Masciarelli and
Lawrence Schultz, 74-CR-144 and United States of
America versus Frank S. Cannone, et al., 74-CR-142.

MR. SCACCIA: May it please the
Court, the matter here involves moving trial by
the Government of both the cases just called by
the clerk. This Court directed the Government
to prepare and submit an order within a ten-day
period and send copies of the proposed order to
Counsel, and I respectfully submit there have been
violations with respect to certain extensive
materials that were in the possession of the
Government.

THE COURT: What's the problem?

MR. SCACCIA: The problem is that
the Government has been moving this case for trial
at a time when it is not ready for trial, and
moreover, motions were made at Utica before
Judge McMahon bringing this entire matter to a
head, by both Mr. Allio and myself, and at that
time, Judge McMahon marked the case off. We had
moved that the case be removed from the ready
calendar, since the case was not ready to proceed,

Transcript of Further Hearing on 3-10-75.

not by virtue of any delay attributable to the Defendants. Judge McMahon, in response to Mr. Lowe who represented the Government, said that the matter as to whether time would be charged would be left to the trial judge, and within a few days after that ruling, the Government moved the case again, this time at the Albany session, and we still haven't received any discovery material of any kind.

THE COURT: So your problem is you haven't received the material on discovery.

MR. SCACCIA: That's correct.

MR. WELCH: If your Honor please, I would like to note on the record that this case was dated November 18, and the six-months rule expired without any motions. Not until March 19th -- The case is basically three and a half months behind. On January 30th your Honor ordered certain disclosures to be made. At that time, your Honor, after asking me, set ten days to accomplish that because of the pending Utica trial calendar. It was at that time when I came down with what subsequently was diagnosed as infectious hepatitis which left me out of work for five weeks. Regarding the matter of an answer, the matter was adjourned because

Transcript of Further Hearing on 3-10-75.

4

of the inability of the Government to file on time for the Defense to prepare for the trial. The Court brought the matter back up on the Albany calendar, your Honor, and because of the confusion in my office, the discovery has never been accomplished and the Defense could not be ready to go to trial at the Albany calendar. I have received word from three defense attorneys as to what their motion is, your Honor.

THE COURT: Well, I have gotten letters. It seems everybody representing the defendants but Mr. Scaccia wants the matter adjourned; is that right?

MR. WELCH: That's my interpretation.

THE COURT: So I read the minutes here before Judge Foley, and there was an error there. Either he changed his mind after talking to Mr. Scaccia or else Mr. Scaccia misunderstood when he represented to the Court that all the defendants were urging trial at that session.

MR. WELCH: I have nothing further, your Honor.

THE COURT: Be that as it may,

Mr. Scaccia, every time you appear before me --

MR. SCACCIA (Interrupting):

Listen, Judge, I don't think that's fair, that that comes up every time I appear before you, and we have --

THE COURT: You mean to speak respectfully.

MR. SCACCIA: I am, your Honor.

THE COURT: This "Listen, Judge" doesn't come in that category, so you learn that.

MR. SCACCIA: I certainly didn't intend disrespect there, your Honor.

THE COURT: I won't tolerate that. I want that understood. All right, I have heard the argument. When can this material be prepared?

MR. WELCH: I anticipate no more delay, your Honor, and the next two weeks --

THE COURT: Did I issue an order here, or did the Government agree to --

MR. SCACCIA (Interrupting): Both, your Honor.

THE COURT: Were there any delays?

Transcript of Further Hearing on 3-10-75.

MR. SCACCIA: Yes, there were, your Honor. That's the point I was trying to make. The Government was supposed to prepare an order. They had the list of orders.

THE COURT: Has anybody got a transcript of that?

MR. SCACCIA: I have notes, and there are minutes.

THE COURT: What was the date of that?

MR. WELCH: January 13.

THE COURT: All right. I will prepare an order that will take care of that. I will give you five days to submit the material that is required. I appreciate that you were seriously ill, and I think Counsel does. Everyone does. The case is to be removed from the Albany calendar. The case is to be Number One on the May Criminal Calendar call.

MR. SCACCIA: I brought letters Counsel have been sent, plus their telephone calls. They have the impression that the case is not going to be moved for the Auburn term. Now, I was not part of that, but I feel that I ought to point it out to the Court.

Transcript of Further Hearing on 3-10-75.

THE COURT: You mean the other defendants?

MR. SCACCIA: Yes. In their impression --

THE COURT: Well, I will just defer to Mr. Welch. He was a party to this.

MR. WELCH: Your Honor has the letters to the Court with their motions, and their motions appear to be that they are not ready and do not want to be ready until the Government has supplied that material. I anticipate having that material long before the Auburn Term, your Honor.

MR. SCACCIA: Now, Judge, there is another matter that is still pending and that was heard on motions made at Utica on January 31, and that is as to whether or not the time is going to be chargeable to the Defense.

THE COURT: Well, that I can determine when the matter arises. It may become academic.

MR. SCACCIA: Right. The reason I brought it up is because at the Albany term the matter was handled systematically, but there was a question as to whether or not time was chargeable and that is what --

Transcript of Further Hearing on 3-10-75.

THE COURT: Well, it was not that soon and the gentlemen still consented an order be served, and the Court was unaware of it.

MR. SCACCIA: The Defense was moving the case for trial. Whether it was the U.S. Attorneys's office -- that was one of the things that Judge Foley directed and that was one of the reasons he was ordering the minutes transcribed and sent here, your Honor, to bring this matter of co-ordination to your Honor's attention.

THE COURT: Now, what this lawyer Remo Allio does is make an observation that, in his opinion, which he doesn't dignify as carrying much weight -- The way he puts it is his opinion, together with 35 cents will get him a ride on the subway -- but in his opinion, the case will not be going to trial until September of this year because there are many and various things to do and many attorneys involved. Now, I think that it can be fairly certain that as long as Mr. Scaccia wants a trial that it will be tried before September. It will be tried at the May Term, as long as the Defense Attorney wants a trial.

MR. SCACCIA: I am simply

Transcript of Further Hearing on 3-10-75. 9

asking, Judge, we not be put in a position --

THE COURT: Well, it will be tried in May. As long as somebody wants to try it, it's going to be tried.

MR. SCACCIA: Do I take it your Honor is reserving to trial or the later term?

THE COURT: Well, there is no issue before me. There is nothing to decide right now. If we get a question of the six-months rule becoming involved, why, that will be it. Right now it's no problem.

MR. SCACCIA: Judge, it only comes up because --

THE COURT: Well, whatever it comes up for, it's no problem, and the six-months rule, of course, is not an arbitrary rule of trial; it's just a rule that the Government need be ready for trial. It doesn't necessitate a trial within six months. The rule doesn't say that.

MR. SCACCIA: No. I understand that, your Honor, but what causes problems is there was a ruling by the Court in each and every case as to whether the time would be chargeable to the Defense or chargeable to the Government.

THE COURT: And this was left open.

MR. SCACCIA: Judge Foley referred that question here.

MR. WELCH: It's all on the record.

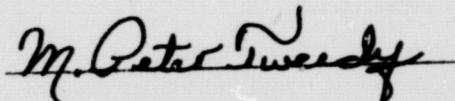
THE COURT: Well, I read that record, and as with most of those records where there is conversation back and forth, it's largely unfinished sentences. It's difficult to understand.

MR. SCACCIA: I might say there were third and fourth parties also speaking, your Honor.

THE COURT: Therefore, there were all kinds of interruptions, but that question isn't ripe yet, and, of course, I am certain that any judge considering time factors is going to take into consideration the fact that Mr. Welch was seriously ill.

(Whereupon, the proceedings in the above-entitled action were concluded.)

I, M. Peter Tweedy, Acting Official
Reporter for the United States District Court,
Northern District of New York, do hereby certify
that the foregoing is a true and accurate transcript
of the stenographic notes of the proceedings held
at Syracuse, New York on the 10th day of March,
1975.



Albany, New York
Dated: May 23, 1975

**Order of Honorable Edmund Port,
dated 3-11-75.**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

FRANK S. CANNONE, STANLEY A. REPUCCI,
THOMAS A. GAETANI, JON N. ENGLISH,
JOSEPH N. MARUCA, VINCENT N. CHRISTINA,
A. R. SANTACROSSE, JR., RAY D. MASCIARELLI,
JAMES W. MC GRATH, THOMAS J. ABBEDESSA,
and ANDREW J. GUINLAND.

74-CR-142

UNITED STATES OF AMERICA,

-against-

74-CR-144

RAYMOND D. MASCIARELLI.

APPEARANCES:

JAMES M. SULLIVAN, JR.
United States Attorney
Federal Building
Syracuse, New York
Attorney for Plaintiff

WILLIAM J. DREYER
Assistant U. S. Attorney
Of Counsel

*I certify that
This is a true copy

DANTE M. SCACCIA, ESQ.
300 Wilson Building
306 South Salina Street
Syracuse, New York
Attorney for Defendants
Maschiarelli and McGrath

Attest

3/13/75

J. R. SCULLY
Clerk, U.S. District Court

EDMUND PORT, Judge

By: William Murphy
Deputy

ORDER

It appearing that the above-entitled cases were on a calendar
of cases to be scheduled for trial before Honorable James T. Foley
on March 4, 1975 at Albany, New York and that the defendants,

Order of Honorable Edmund Port, dated 3-11-75.

Raymond D. Masciarelli and James W. McGrath, appearing by Dante M. Scaccia, of counsel, brought certain matters to the attention of Judge Foley, who referred the matters to the undersigned for disposition at a motion day of this court held at Syracuse, New York on March 10, 1975; and it further appearing that said defendants having previously moved for discovery and for severance at a motion day of this court held on January 13, 1975 at Syracuse, New York; and it further appearing that said motions were disposed of by a ruling from the bench with a direction to the United States Attorney to prepare an order in accordance with the rulings of the court; and it further appearing that, subsequent thereto, the United States Attorney in charge of said matter having been unable to do so because of a serious illness, said order was not complied with, and the court having stated that it would prepare an order in accordance with the disposition of the motions made on January 13, 1975, it is

ORDERED, that Count 3 of Indictment 74-CR-142 be and the same hereby is severed for trial from Counts 1 and 2; and it is further

ORDERED, that the motion for discovery be and it hereby is granted insofar as the Government has offered to comply with said requests for discovery in a letter attached to the moving papers dated December 20, 1974 to Dante M. Scaccia, Esq. from Eugene Welch, Assistant United States Attorney; and it is further

ORDERED, that the Government supply the defendants' attorney

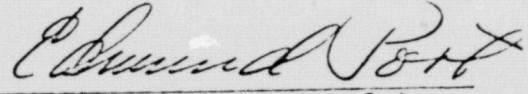
Order of Honorable Edmund Port, dated 3-11-75.

with the names and addresses of all Government witnesses which the Government intends to call in the presentation of its case in chief; and it is further

ORDERED, that the Government permit the defendants to listen to any recordings in the possession of the Government resulting from electronic surveillance; and it is further

ORDERED, that the motions of the defendants be denied in all respects except as specifically granted herein; and it is further

ORDERED, that the Clerk of the Court serve certified copies of this Order on the attorneys for the parties hereto.



United States District Judge

Dated: March 11, 1975
Auburn, New York

Government's 3-27-75, Motion, Affidavit, and Memorandum of
Law, in Support of Motion to Vacate Order Re: Disclosure of
Government's Witnesses.

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA)	
)	
V.	)	Criminal No. 74-CR-142
)	

FRANK S. CANNONE, STANLEY A. RAPPUCCI,)	
THOMAS A. GAETANI, JON N. ENGLISH,)	
JOSEPH N. MARUCA, VINCENT N. CHRISTINA,	)	<u>NOTICE</u>
ANTHONY R. SANTACROSE, JR.,)	
RAYMOND D. MASCIARELLI, JAMES W. MCGRATH,	)	<u>OF</u>
ANDREW J. QUINLAN, AND THOMAS J. ABBADESSA.	)	<u>MOTION</u>
)	

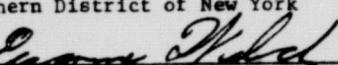
UNITED STATES OF AMERICA)	
)	
V.	)	Criminal No. 74-CR-144
)	
RAYMOND D. MASCIARELLI and)	
LAWRENCE SCHULTZ.)	
)	

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit and memorandum of law, the Indictments herein and all the papers and records of proceedings herein, the undersigned will move this Court at the U. S. Federal Building and Post Office, Syracuse, N. Y., on the 14th day of April, 1975 at 10:00 A.M., or as soon thereafter as counsel can be heard for an Order vacating the third mandate of this Court's Order dated March 11, 1975 requiring pretrial disclosure of the government's witnesses and any further relief as to the Court may seem just and proper.

Dated: March 27, 1975

Yours, etc.,
JAMES M. SULLIVAN, JR.
United States Attorney for the
Northern District of New York

By 
EUGENE WELCH
Assistant United States Attorney
Federal Building
Syracuse, New York 13201
Telephone (315) 473-6660

TO: HONORABLE EDMUND PORT
United States District Judge
USPO & Courthouse
Auburn, New York 13021

Government's 3-27-75, Motion, Affidavit, and Memorandum of
Law, in Support of Motion to Vacate Order Re: Disclosure of
Government's Witnesses.

TO: (continued)

HON. JOSEPH R. SCULLY, CLERK
United States District Court
Federal Building
Utica, New York 13501

REMO A. ALLIO, ESQ.
19 Washington Avenue
Endicott, New York 13760

HAROLD J. BOREANAZ, ESQ.
736 Brisbane Bldg.
Buffalo, New York 14203

MICHAEL J. DESISTI, ESQ.
101 Hayden Street
Sayre, Pennsylvania 18840

DANTE M. SCACCIA, ESQ.
300 Wilson Building
306 South Salina Street
Syracuse, New York 13202

Government's 3-27-75, Motion, Affidavit, and Memorandum of Law, in Support of Motion to Vacate Order Re: Disclosure of Government's Witnesses.

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA)	
)	
V.	)	Criminal No. 74-CR-142
)	
FRANK S. CANNONE, STANLEY A. RAPPUCCI,)	
THOMAS A. GAETANI, JON N. ENGLISH,)	
JOSEPH N. MARUCA, VINCENT N. CHRISTINA,)	
ANTHONY R. SANTACROSE, JR.,)	
RAYMOND D. MASCiarelli, JAMES W. McGRATH,)	
ANDREW J. QUINLAN, and THOMAS J. ABBADESSA.	)	<u>AFFIDAVIT IN SUPPORT OF MOTION</u> <u>TO VACATE ORDER RE: DISCLOSURE</u> <u>OF GOVERNMENT'S WITNESSES</u>

UNITED STATES OF AMERICA)	
)	
V.	)	Criminal No. 74-CR-144
)	
RAYMOND D. MASCiarelli and)	
LAWRENCE SCHULTZ.)	

I, EUGENE WELCH, being duly sworn, depose and say:

1. I am an Assistant United States Attorney to James M. Sullivan, Jr., United States Attorney for the Northern District of New York. I maintain my office in Syracuse, New York. I am assigned to represent the government in the above-captioned cases. I make this affidavit in support of my motion for an Order vacating that part of this Court's March 11, 1975 Order requiring pretrial disclosure of the Government's trial witnesses.

2. On November 18, 1974 a federal grand jury returned two Indictments against a total of twelve defendants. Indictment 74-CR-142 charged defendants Cannone, Rappucci, Gaetani, English, Maruca, Santacrose, Masciarelli, McGrath, Quinlan and Abbadessa with conducting an illegal gambling business in violation of 18 U.S.C. §1955, and conspiring to conduct an illegal gambling business in violation of 18 U.S.C. §371. In a third count, Indictment 74-CR-142 charges defendants Maruca and Christina with obstruction of justice for beating a grand jury witness after he testified in the grand jury and on account of his so testifying, a violation of 18 U.S.C. §1503. This count, therefore, clearly demonstrates that the grand jury felt that at least these two defendants were capable of attempting to influence the government's witnesses. Indictment

Government's 3-27-75, Motion, Affidavit, and Memorandum of Law, in Support of Motion to Vacate Order Re: Disclosure of Government's Witnesses.

74-CR-144 charges defendants Masciarelli (also indicted in 74-CR-142) and Schultz (not indicted in 74-CR-142), with interstate transmission of wagering information, in violation of 18 U.S.C. §1084(a).

3. On January 13, 1975 the Court heard arguments on discovery motions made by four defense attorneys on behalf of ten of the twelve defendants. Specifically, it is the recollection of your affiant that when asked by the Court if he had anything to say in regard to his demand for a list of the government's witnesses, attorney Scaccia stated he had no authority for his demand which the government had refused and was therefore not going to argue it. (At the date of this affidavit the transcript of those January 13th arguments has not yet been prepared, but your affiant has requested that it be prepared and your affiant was assured it would be ready by April 14, 1975, the return date of this motion.) It was your affiant's conclusion from these remarks that the demand for the government's witnesses was thereby withdrawn.

4. The minutes of January 13, 1975, attached hereto as Exhibit "A", reflecting the Court's oral ruling are entirely silent as to disclosure of the government's witnesses except in so far as that item is included in "Motions for Discovery and Inspection, Bill of Particulars, Severance, etc. - Granted as to the extent as supplied by the Gov't." As indicated above, the government steadfastly opposed the pretrial disclosure of its witnesses in this case where one of its witnesses in the grand jury was already beaten. It was, therefore, your affiant's conclusion that the Court was not ordering the disclosure of the government's witnesses.

5. On January 13, 1975 the Court ordered the government to prepare the Order for the Court's signature. On the afternoon of January 13, 1975 your affiant, government counsel in this case, left work on sick leave. Your affiant was subsequently diagnosed as seriously ill and was unable to prepare the Order.

6. On March 10, 1975 the Court indicated it would prepare its own order setting forth its ruling of January 13, 1975.

7. On March 21, 1975, your affiant received the March 11, 1975 Order

Government's 3-27-75, Motion, Affidavit, and Memorandum of Law, in Support of Motion to Vacate Order Re: Disclosure of Government's Witnesses.

(attached hereto as Exhibit "B") which is the subject of this motion. The government's copy of that Order had apparently been misdirected to an Assistant United States Attorney in the Albany, N. Y., office of the United States Attorney, that Assistant having appeared at a calendar call at which these cases had been called. It was in this March 11, 1975 Order that the Court, for the first time, ordered disclosure of the government's witnesses.

8. The government remains opposed to the pre-trial disclosure of its witnesses in this case on the grounds that such disclosure could result in undue pressure on or threats to these witnesses and further violence could result if their identities are made known. This position is sufficiently grounded upon the fact that, upon information and belief, one witness has already been beaten resulting in Count III of Indictment 74-CR-142. In addition, upon information and belief, the government knows of two additional incidents where attempts have been made in this case to influence two other witnesses. The government is prepared to make certain materials available to the Court for in camera inspection by the Court to verify these two other incidents. Your affiant submits that this is a more than sufficient showing to justify denial of pre-trial disclosure of the government's witnesses.

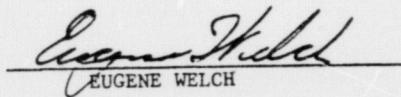
9. The defendants, on the other hand, have made no showing in their moving papers or arguments to the Court that this demand for the government's witnesses is material in any particular way to the preparation of their defenses or that such a demand is reasonable. The defense has provided no authority for this demand and did not really pursue it at oral argument.

10. WHEREFORE, it is respectfully requested, in light of all of the above and the attached memorandum of law, that the Court reconsider its

Government's 3-27-75, Motion, Affidavit, and Memorandum of Law, in Support of Motion to Vacate Order Re: Disclosure of Government's Witnesses.

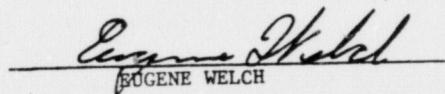
March 11, 1975 Order and issue a new Order vacating that part of the March 11, 1975 Order that requires disclosure of the government's witnesses in this case.

Dated: March 22, 1975

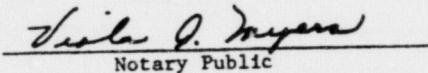

EUGENE WELCH

STATE OF NEW YORK)
: ss.:
COUNTY OF ONONDAGA)

I, EUGENE WELCH, being duly sworn, state that I have read the above affidavit and know the contents thereof and the same are true to my knowledge except as to those matters alleged upon information and belief and as to those matters I believe them to be true.


EUGENE WELCH

Sworn to before me this
27th day of March, 1975.


Notary Public

VIOLA A. MYERS
Notary Public in the State of New York
Qualified in Onondaga County
My Commission Expires March 30, 1976

143
Government's 3-27-75, Motion, Affidavit, and Memorandum of
Law, in Support of Motion to Vacate Order Re: Disclosure of
Government's Witnesses.

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

)

V.

)

FRANK S. CANNONE, STANLEY A. RAPPUCCI,
THOMAS A. GAETANI, JON N. ENGLISH,
JOSEPH N. MARUCA, VINCENT N. CHRISTINA,
ANTHONY R. SANTACROSE, JR.,
RAYMOND D. MASCIARELLI, JAMES W. McGRATH,
ANDREW J. QUINLAN, and THOMAS J. ABBADESSA.)

Criminal No. 74-CR-142

UNITED STATES OF AMERICA

)

V.

)

RAYMOND D. MASCIARELLI and
LAWRENCE SCHULTZ.)

Criminal No. 74-CR-144

MEMORANDUM OF LAW

IN SUPPORT OF
MOTION TO VACATE ORDER RE:
DISCLOSURE OF GOVERNMENT'S WITNESSES

The government respectfully submits this memorandum of law in support of its motion to vacate that part of this Court's March 11, 1975 Order requiring pre-trial disclosure of the government's witnesses in this case.

The government is not contending that this Court is beyond the scope of its authority in issuing this order, nor are we conceding that this Court has that authority. We are simply assuming, for the sake of this motion in this case, that it is a matter for the Court's discretion and we respectfully request that this Court reconsider the matter in light of the facts in this case.

As a starting point it should be noted nowhere in the United States Code

Government's 3-27-75, Motion, Affidavit, and Memorandum of Law, in Support of Motion to Vacate Order Re: Disclosure of Government's Witnesses.

or the Federal Rules of Criminal Procedure is the Court authorized to or prohibited from ordering pre-trial disclosure of the government's witnesses in a non-capital case. Title 18, United States Code, Section 3432 requires pre-trial disclosure of the government's witnesses in capital cases and if it so intended, Congress could have extended this to non-capital cases. The argument can be made that Congress did not intend that Courts order pre-trial disclosure of government witnesses. The argument is further enforced by the fact that Congress specifically prohibited pre-trial disclosure of witnesses' statements in 18 U.S.C. §3500, the Jencks Act. Rule 16 of the Federal Rules of Criminal Procedure specifically notes that discovery of witness statements will only be as provided in Section 3500, that is, not pre-trial, but only after the witness testifies at trial. Recently the Second Circuit has reversed a District Court for exceeding its authority in ordering pre-trial disclosure of certain witness statements in light of Rule 16 and Section 3500, United States v. Percevault, 490 F.2d 126 (2nd Cir. 1974). There the court observed at p. 131, "Fear of intimidation of witnesses and concern over efforts to suborn perjury were not flights of fantasy by those who drafted Rule 16." The government urges here that the beating of a grand jury witness alleged in the indictment is no flight of fantasy and the government's concern over pre-trial disclosure of witnesses is genuine.

One defense attorney in his moving papers included reference to the proposed amendments to the Federal Rules of Criminal Procedure which propose requiring, on demand, disclosure of the government's witnesses. But it is important to note that these amendments are not yet in effect and are still being debated in Congressional hearings.

The Supreme Court discussed the questions herein but did not decide them in Will v. United States, 389 U.S. 90, 88 S.Ct. 269 (1967). For purposes of its decision the Will case assumed that such a discovery order was a matter within the trial court's discretion.

Another basic point that must be made is that "[t]here is no obligation on the part of the government to inform the defense of its intention to

Government's 3-27-75, Motion, Affidavit, and Memorandum of Law, in Support of Motion to Vacate Order Re: Disclosure of Government's Witnesses.

call a witness when the indictment is for a non-capital offense."

United States v. Persico, 425 F.2d 1375, 1378 (2d Cir. 1970), cert. denied, 400 U.S. 869.

Where all this leaves us then, is with the assumption that it is a discretionary matter for the trial judge to decide whether there is any reason for granting a demand for a list of government witnesses. The reviewing courts discussed below indicate that the defense should make some showing as to why they should be disclosed. If the defense makes such a showing then the government should be heard as to why this discovery should be denied.

In Will v. United States, 389 U.S. 90, 88 S.Ct. 269 (1967), the Supreme Court was impressed with the fact that Judge Will limited his pre-trial disclosure order to those witnesses that the defense had demonstrated a need to discover. The defense had made a specific showing. The government, on the other hand, had not shown Judge Will any reason to deny this limited discovery of certain witnesses. The Supreme Court also noted that Judge Will had denied a demand for a list of all the government's witnesses.

In United States v. Baum, 482 F.2d 1325, 1329-32 (2d Cir. 1973) the Second Circuit discussed the factors to be considered in regard to disclosure of government witnesses. Although a conviction before Judge MacMahon was reversed in the Baum opinion the case supports the government's position in this case. Baum had moved for pre-trial discovery of the government's witnesses and Judge MacMahon denied the motion. At trial the government called a witness whose testimony was admitted on a delicate balancing by Judge MacMahon who weighed the prejudicial effect of the testimony against its probative value. The defense then asked for a continuance to investigate the surprise testimony and Judge MacMahon refused to delay the trial. The Court of Appeals agreed with Baum that he was denied a fair trial because of the cumulative effect of being denied prior disclosure of the witness, being denied time during trial to meet this new evidence, and the highly prejudicial nature of the testimony. The

Government's 3-27-75, Motion, Affidavit, and Memorandum of Law, in Support of Motion to Vacate Order Re: Disclosure of Government's Witnesses.

Court of Appeals stressed that in Baum there were no valid considerations to justify concealment of this witness as there were in concealing the witness in Persico, cited above, 425 F.2d 1375 (2d Cir. 1970). The Court of Appeals in Baum stressed that there would have been no danger to this witness caused by pre-trial disclosure because he was in custody and not as likely to be influenced as a man not in custody. The government contends that in this present case where a witness has already been beaten and others have been subjected to attempts to influence them, there is every reason not to order disclosure of all the government's witnesses.

In United States v. Richter, 488 F.2d 170, 173, 174-75 (9th Cir. 1973) the government appealed a pre-trial order dismissing the Indictment based upon the government's declining to comply with an order requiring pre-trial disclosure of its witnesses. The Court of Appeals reversed the district court indicating that such an order may be within the discretion of the District Court. The Court indicated, however, that there must be some showing of genuine need by the defense. Then the government must be given an opportunity to show the court the need for limiting that discovery. Neither of those steps had occurred in Richter. In the present case the defense has made no showing but the government has.

In United States v. Cole, 449 F.2d 194, 198 (8th Cir. 1971), cert. denied 405 U.S. 931, the Court of Appeals held it was not an abuse of discretion for the trial court to have denied pre-trial disclosure of all the government's witnesses, particularly where the record showed there were alleged threats to government witnesses. Herein the grand jury has found that a witness was actually beaten.

Without shedding much light on the subject the Sixth Circuit in United States v. Condor, 423 F.2d 904, 910 (6th Cir. 1970), cert. denied 400 U.S. 958, has affirmed a denial of pre-trial discovery of the government's witnesses on reviewing a conviction. It said, "Similarly, the names and criminal records of government witnesses are not discoverable under Rule 16(b)."

Government's 3-27-75, Motion, Affidavit, and Memorandum of Law, in Support of Motion to Vacate Order Re: Disclosure of Government's Witnesses.

Judge MacMahon has applied these basic guidelines in his often quoted case of United States v. McCarthy, 292 F.Supp. 937, 940-41 (S.D. N.Y. 1968). Judge MacMahon reasserted what had been said frequently before, "Particulars seeking the names of witnesses have almost uniformly been denied." In McCarthy, Judge MacMahon ordered pre-trial disclosure of some specific witnesses where there had been some specific showing of need by the defense. When there was no showing he denied the demand. He denied the general demand for a list of all the government's witnesses. See also Hemphill v. United States, 392 F.2d 45, 48 (6th Cir. 1968), cert. denied 400 U.S. 958; United States v. Dioguardi, 332 F.Supp. 7, 18 (S.D. N. Y. 1971, Lasker, J.); and United States v. Hasiwar, 299 F.Supp. 1053, 1055 (S.D. N. Y. 1969, Tenney, J.); United States v. Westmoreland, 41 FRD 419, 427 (SD Ind. 1967, Steckler, C.J.); and United States v. Cobb, 271 F.Supp. 159, 162 (S.D. N. Y. 1967, Mansfield, J.).

CONCLUSION

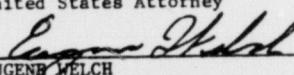
The government submits that the present status of the law is such that this Court should examine what showing, if any, the defense has made to justify pre-trial disclosure of all government witnesses. There has been nothing more presented by the defense beyond a mere assertion that such discovery would help them prepare. Additionally, the defense never pursued the matter at argument but practically withdrew that part of their discovery motion. The Court's March 11, 1975 Order requiring such a wide ranging disclosure is close to being sua sponte.

The government's opposition to this disclosure, it is respectfully submitted, is genuine and well founded. It is submitted that the government has made a sufficient showing as to why such disclosures should not be ordered. One witness was already beaten and attempts have been made to influence two other witnesses already. In the face of no showing by the defense these facts constitute overwhelming reasons for denying disclosure of the government's witnesses.

WHEREFORE it is respectfully requested that this Court issue a new Order vacating that part of its March 11, 1975 Order requiring pre-trial disclosure of the government's witnesses and granting such further relief as may be appropriate.

Dated: March 27, 1975.

Respectfully submitted,
JAMES M. SULLIVAN, JR.
United States Attorney

By: 
EUGENE WELCH
Assistant United States Attorney
Federal Building, P. O. Box 1258
Syracuse, New York 13201
Telephone: (315) 473-6660

Government's 3-27-75, Motion, Affidavit, and Memorandum of Law, in Support of Motion to Vacate Order Re: Disclosure of Government's Witnesses.

SYRACUSE, NEW YORK - JANUARY 13, 1975
 HONORABLE EDMUND PORT, PRESIDING
 CLERK: DOGETT
 STENO: H. SHEFFER

Robert S. DoMore admitted on the motion of Carl Oropallo
 Steven C. Haas admitted on the motion of George H. Lowe
 Michael O. Saunders admitted on the motion of George H. Lowe
 Dennis N. Hawthorne admitted on the motion of Donald Peterson
 Stephen L. Cimino admitted on the motion of Ralph Manaker
 Donald J. Martin admitted on the motion of George H. Lowe

In the Matter of the Arbitration between 74-CV-484
 Jess Webb, etc. and Oliver B. Cannon & Son, Inc.
 Motion for an Order directing arbitration.
 Ready - Wed. January 15, 1975 at Auburn
 Appearances: Bond, Schoenck & King by Sexton for Deft.
 Charles Blitman for Petitioner

In the Matter of the Application of the U.S.A. Misc. No. 31
 and Kenneth C. Scholz vs Frank Russo
 Return of Order to Show Cause- Defendant has complied. Arthur
 A. Chalenski moves to withdraw Motion - Motion withdrawn.
 Clerk directed to close.
 Appearances: Hon. James M. Sullivan, Jr. by A. A. Chalenski, Jr.

United States of America vs Robert E. Weir, 73-CV-441
 Mary P. Weir, Norwich Oil Co., Inc.
 Motion for Judgment of Foreclosure & Sale - Submitted
 Appearances: James M. Sullivan, Jr., by A. A. Chalenski, Jr.

Pearne W. Billings vs U.S.A. 70-CV-419
 Motion compelling plaintiff to answer interrogatories
 1964 tax dismissed. George H. Lowe to enter order compelling
 answer to Interrogatories within thirty days.
 Appearances: Hon. James M. Sullivan, Jr. by George H. Lowe

United States of America vs Frank S. Cannone, et al 74-CR-142
 Motions for discovery and Inspection, Bill of Particulars
 Severance, etc. - Granted as to the extent as supplied by
 the Gov't. Gov't. is directed to permit defendants to hear
 the tapes of interception. Count 3 is severed for trial from
 Counts 1 and 2. Eugene Welch is directed to submit an Order,
 and directed to provide material within ten days. Motion for
 polygraph test by Mr. Allio - denied. No motions have been
 made by deft. English. Eugene Welch is directed to answer whether
 or not the person in question is a regular Asst. U. S. Atty..or
 a member of the strike force.
 APPEARANCES: James M. Sullivan, Jr. by Eugene Welch
 Harold J. Boreanaz, Dante M. Scaccia, Remo A. Allio

Government's 3-27-75, Motion, Affidavit, and Memorandum of Law, in Support of Motion to Vacate Order Re: Disclosure of Government's Witnesses.

SYRACUSE, N. Y. JANUARY 13, 1975

PAGE 2

Salem Mahshie vs Casper Weinberger, etc. 73-CV-164
 Motion for an Order to include exhibits into the record- no opposition on behalf of Gov't. Remanded- Government to submit Order on consent.
 Appearances: George T. Mahshie for Plaintiff
 James M. Sullivan, Jr. by George H. Lowe

George O. McNaney and Joseph L. Trengold 73-CV-357
 vs Square D. Company
 Motion for Order denying all costs to the Plaintiff - to be heard by Judge MacMahon. January 31, 1975 at Utica. Directed to notify Friedlander. Execution for Bill of Costs is stayed

The Oneida Indian Nation of New York 74-CV-167
 vs Abraham Williams, et al
 Motion to Shorten time to enter upon property to survey - Plaintiff directed to give each individual owner five days' notice before survey crew to survey. To submit Order approved by defendant.
 Appearances: Richard Alderman
 Donald Kampole

Salina Audio Visual Vo., Inc. vs 72-CV-122
 Sony Corporation of America
 Motion for Summary Judgment - adjourned to January 27th, Utica. Asked that it not be dismissed on 1/14/75.

United States of America vs Paul W. Zobie 70-CV-191
 Donna L. Zobie, Paul Huntington, et al
 Motion for an Order confirming Report of Sale - Submit Order
 Appearances: Hon. James M. Sullivan, Jr. by A. A. Chalenski, Jr.

United States of America vs Anthony DeStefano, et al 74-CR-50
 Motion to inspect G.J. Minutes, Suppression, dismissing.
 Denied as previous motions James Foley's decision.
 Submit Order
 Appearances: Hon. James M. Sullivan, Jr. by George H. Lowe
 John Rinaldi

State of New York vs Danny White, et al 74-CV-370
 Motion to Intervene is taken under advisement, reserve decision.
 Motion to dismiss-intervenors to appear as amicus curiae on motion to dismiss, Intervenors to file answer and related papers before the return of the motion. Motion is adjourned to Jan. 27 at Utica.
 Appearances: Hon. Louis J. Lefkowitz by J. Jankowitz
 Hamilton White for Big Moose Homeowners Assoc.
 Nancy Stearns for Defts.
 Robert T. Coulter for Defts., admitted for purposes
 W. J. Foley for Town of Webb
 Douglas S. Gokes, Harris Beach & Wilcos, Rochester

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Government's 3-27-75, Motion, Affidavit, and Memorandum of
Law, in Support of Motion to Vacate Order Re: Disclosure of
Government's Witnesses.

SYRACUSE, N. Y. JANUARY 13, 1975

Page 3

United States of America vs 74-CV-153
Horace T. Vezzose & James Vezzose
Motion for Judgment of Foreclosure and Sale -
Judge Port signs Order. exhibits 1-6 marked received
in evidence.
Appearances: James M. Sullivan, Jr. Gustave J. DiBianco

Anthony Ricco vs Richards Enders, et al 74-CV-421
Motion to Dismiss, Motion for Summary Judgment -
Adjourned to Utica, January 29, on consent.
Appearances: James M. Sullivan, Jr. Arthur A. Chalenski, Jr.

Richard Lambertson vs U.S.A. 74-CV-422
Motion to dismiss for lack of jurisdiction.
Adjourned to February 10 at Syracuse. To submit affidavit
and memorandum
APPEARANCES: Anthony Endieveri for Plaintiff
James M. Sullivan, Jr. George H. Lowe

Government's 3-27-75, Motion, Affidavit, and Memorandum of Law, in Support of Motion to Vacate Order Re: Disclosure of Government's Witnesses.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CHAMBERS OF
EDMUND PORT
U. S. DISTRICT JUDGE
AUBURN, N. Y. 13021

March 20, 1975

Eugene Welch
Assistant Attorney General
Federal Building
Syracuse, New York

Re: UNITED STATES v. CANNONE, et al 74-CR-142
UNITED STATES v. MASCIARELLI 74-CR-144

Dear Sir:

As per your request, enclosed for your reference is a copy of Judge Port's Order of March 11, 1975 in regard to the above-captioned actions.

Very truly yours,

EDMUND PORT
U. S. District Judge

Mary LoBisco

By: Mary LoBisco
Secretary

/ml

enclosure

Government's 3-27-75, Motion, Affidavit, and Memorandum of Law, in Support of Motion to Vacate Order Re: Disclosure of Government's Witnesses.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

FRANK S. CANNONE, STANLEY A. REPUCCI,
THOMAS A. GAETANI, JON N. ENGLISH,
JOSEPH N. MARUCA, VINCENT N. CHRISTINA,
A. R. SANTACROSSE, JR., RAY D. MASCIARELLI,
JAMES W. MC GRATH, THOMAS J. ABBEDESSA,
and ANDREW J. GUINLAND.

74-CR-142

UNITED STATES OF AMERICA,

-against-

74-CR-144

RAYMOND D. MASCIARELLI.

APPEARANCES:

JAMES M. SULLIVAN, JR.
United States Attorney
Federal Building
Syracuse, New York
Attorney for Plaintiff

WILLIAM J. DREYER
Assistant U. S. Attorney
Of Counsel

DANTE M. SCACCIA, ESQ.
300 Wilson Building
306 South Salina Street
Syracuse, New York
Attorney for Defendants
Maschiarelli and McGrath

EDMUND PORT, Judge

ORDER

It appearing that the above-entitled cases were on a calendar of cases to be scheduled for trial before Honorable James T. Foley on March 4, 1975 at Albany, New York and that the defendants,

Government's 3-27-75, Motion, Affidavit, and Memorandum of
Law, in Support of Motion to Vacate Order Re: Disclosure of
Government's Witnesses.

Raymond D. Masciarelli and James W. McGrath, appearing by Dante M. Scaccia, of counsel, brought certain matters to the attention of Judge Foley, who referred the matters to the undersigned for disposition at a motion day of this court held at Syracuse, New York on March 10, 1975; and it further appearing that said defendants having previously moved for discovery and for severance at a motion day of this court held on January 13, 1975 at Syracuse, New York; and it further appearing that said motions were disposed of by a ruling from the bench with a direction to the United States Attorney to prepare an order in accordance with the rulings of the court; and it further appearing that, subsequent thereto, the United States Attorney in charge of said matter having been unable to do so because of a serious illness, said order was not complied with, and the court having stated that it would prepare an order in accordance with the disposition of the motions made on January 13, 1975, it is

ORDERED, that Count 3 of Indictment 74-CR-142 be and the same hereby is severed for trial from Counts 1 and 2; and it is further ORDERED, that the motion for discovery be and it hereby is granted insofar as the Government has offered to comply with said requests for discovery in a letter attached to the moving papers dated December 20, 1974 to Dante M. Scaccia, Esq. from Eugene Welch, Assistant United States Attorney; and it is further ORDERED, that the Government supply the defendants' attorney

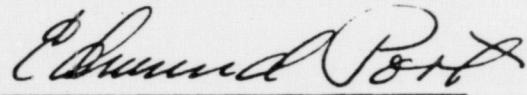
Government's 3-27-75, Motion, Affidavit, and Memorandum of Law, in Support of Motion to Vacate Order Re: Disclosure of Government's Witnesses.

with the names and addresses of all Government witnesses which the Government intends to call in the presentation of its case in chief; and it is further

ORDERED, that the Government permit the defendants to listen to any recordings in the possession of the Government resulting from electronic surveillance; and it is further

ORDERED, that the motions of the defendants be denied in all respects except as specifically granted herein; and it is further

ORDERED, that the Clerk of the Court serve certified copies of this Order on the attorneys for the parties hereto.



United States District Judge

Dated: March 11, 1975
Auburn, New York

**Reply Affidavit of 4-11-75 of Attorney M. J. DeSisti in Reply to
Government's Motion to Vacate Order Re: Disclosure of
Government's Witnesses.**

MICHAEL J. DE SISTI
ATTORNEY AT LAW
101 HAYDEN STREET
ALBANY, NEW YORK 12210

TELETYPE

April 11, 1975

Honorable Edmund Port
U.S. District Judge
U.S. Post Office and Court House
Auburn, N.Y. 13021

In re: Cannone, et al., Andrew J. Quinlan

Dear Judge Port:

Enclosed find affidavit pertaining to above referenced motion
which is returnable April 14, 1975 before your Honorable Court
at Syracuse.

I have today caused the original of this affidavit to be filed
with the Clerk at Utica, N.Y. and a copy served by me on Eugene
Welch, Assistant U. S. Attorney.

Very truly yours,

MJD

M.J. DeSisti

MJD/meh
Enclosure
cc:
Eugene Welch✓
Joseph R. Scully

Reply Affidavit of 4-11-75 of Attorney M. J. DeSisti in Reply to
Government's Motion to Vacate Order Re: Disclosure of
Government's Witnesses.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Criminal No. 74-CP-142

vs.
CATINONE, et al., and
ANDREW J. QUINLAN

) AFFIDAVIT IN REPLY TO GOVERNMENT'S
MOTION TO VACATE ORDER RE:
DISCLOSURE OF GOVERNMENT'S WITNESSES

I, M. J. DESISTI, being duly sworn, depose and say:

1. That I am an Attorney at Law, duly licensed to practice law and have been retained to represent Andrew J. Quinlan, one of the above named defendants.
2. That on March 11, 1975, by order from this court, the government was ordered to disclose the government's witnesses.
3. The law is so numerous and it would be futile to cite same, since there are as many cases against disclosure of witnesses as for the disclosure of witnesses.
4. The law is settled that if this disclosure is essential to preparation of a defense for trial that the same should be made available.

United States vs. Barnes, C.A. No. 1973 406 F2d 776.

5. By virtue of the material furnished to your deponent by the government, examination of the defendant, Andrew J. Quinlan, and other investigation, your deponent has failed to find evidence which would substantiate the charges as alleged against defendant, Andrew J. Quinlan.

6. Relative to the alleged beatings and intimidation of the government's witnesses by certain parties, defendant, Andrew J. Quinlan, is without information since he is not acquainted with said parties and lives some 40 miles from Binghamton, N.Y.

Reply Affidavit of 4-11-75 of Attorney M. J. DeSisti in Reply to
 Government's Motion to Vacate Order Re: Disclosure of
 Government's Witnesses.

7. The said Andrew J. Quinlan is duly employed in his own business, respected citizen of the community of Savre, Pennsylvania where he lives, and would have no reason to intimidate or attempt to influence any of government's witnesses.

8. Andrew J. Quinlan alleges that he is innocent of the alleged charges and as attorney for Andrew J. Quinlan, it is most essential that I have the names of said government witnesses for the purpose of confronting defendant, Andrew J. Quinlan, with same which would help in the preparation of his defense, for without this information I am unable to properly prepare his defense.

WHEREFORE, I, M. J. DeSisti, attorney, respectfully request that the government motion re disclosure of government witnesses be denied and/or that if the motion is granted, it should not be granted as to defendant, Andrew J. Quinlan, and that the names of all witnesses who will testify as to Andrew J. Quinlan, be revealed to your deponent so that your deponent will be given the opportunity to properly prepare the defense for said defendant.

M. J. DeSisti

Dated: April 11, 1975

COMMONWEALTH OF PENNSYLVANIA)
 ss.
 COUNTY OF BRADFORD)

M.J. DeSisti, being duly sworn according to law, deposes and says that the facts set forth in the foregoing are true and correct, to the best of his knowledge, information and belief.

M. J. DeSisti

Sworn to and subscribed
 before me this 11th day
 of April, 1975

Margaret E. Hughes
 Notary Public

My commission expires:

MARGARET E. HUGHES, NOTARY PUBLIC
 APRIL 22, 1976
 COMMISSION EXPIRES APRIL 22, 1976
 MARGARET E. HUGHES, NOTARY PUBLIC

Reply Affidavit of 4-11-75 of Attorney M. J. DeSisti in Reply to
Government's Motion to Vacate Order Re: Disclosure of
Government's Witnesses.

COMMONWEALTH OF PENNSYLVANIA)
ss.
COUNTY OF BRADFORD)

I, Andrew J. Quinlan, defendant in above referenced case, after being duly sworn according to law, state that I have read the above affidavit and that the same is true and correct to the best of my knowledge, information and belief.

Andrew J. Quinlan
Andrew J. Quinlan

Sworn to and subscribed
before me this 11th day
of April, 1975.

Major E. Hughes
Notary Public

My commission expires: **MARGARET E. HUGHES, NOTARY PUBLIC**
ALICIA HUGHES, ALICIA HUGHES COUNTY
My commission expires: May 22, 1976
Member, Florida Notary Public Notaries

Reply Affidavit of 4-8-75 of Attorney Remo A. Allio.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

Criminal No. 74-CR-142

FRANK S. CANNONE, STANLEY A. RAPPUCCI,
THOMAS A. GAETANI, JON N. ENGLISH,
JOSEPH N. MARUCA, VINCENT N. CHRISTINA,
ANTHONY R. SANTACROSE, JR.,
RAYMOND D. MASIARELLI, JAMES W.
McGRATH, ANDREW J. QUINLAN and THOMAS
J. ABBADESSA.

REPLY AFFIDAVIT

UNITED STATES OF AMERICA

Criminal No. 74-CR-144

-v-

RAYMOND D. MASIARELLI and
LAWRENCE SCHULTZ.

STATE OF NEW YORK:

ss.;

COUNTY OF BROOME:

REMO A. ALLIO, being duly sworn, deposes and says:

1. That I have read the affidavit of Eugene Welch.

2. That he has almost convinced me that a case that should be in the Justice Court in the Town of Union, or Vestal, is a federal case, and, certainly, I am now convinced that he is going to make a federal case out of it and, as a matter of fact, by the time he finishes with it, it might go to the United Nations.

3. I do not know anything about anyone being threatened, but I have discussed this matter with Anthony R. Santacrose, and he assures me that he has threatened no one and does not intend to threaten anyone and he knows nothing about anyone threatening anyone and, certainly, knows nothing about any alleged beating.

4. That, upon information and belief, any information that I have about the alleged beating leads me to believe that there actually was not a beating, and there was only a fight between friends, and/or former friends.

Reply Affidavit of 4-8-75 of Attorney Remo A. Allio.

which had nothing to do with this case.

5. That Mr. Santacrose is the father of five children, one of whom is going to college, and another is about to go, he owns his own home, fully paid for; is president of a corporation that does a business of over \$500,000 a year in selling furniture at retail where they claim "That it is a little out of the way but a lot less to pay" and his background has been one which commenced with selling newspapers on Washington Avenue; washing dishes in a restaurant on Washington Avenue; shining shoes at 5¢ a shine and, thereafter, buying the shoe shine parlor when the price went up to 10¢ a shine; working while a member of the U. S. Army in Alaska and working day and night in a furniture store which started out with extremely little capital and built the same into a very successful business.

6. PERHAPS MR. WELCH WOULD BE INTERESTED IN TELLING ME WHY THIS PERSON, ANTHONY SANTACROSE (his father having died lately, so he is Anthony R. Santacrose, without the "Jr.") SHOULD BE DEPRIVED OF ANY OF THE NAMES OF THE WITNESSES THAT MIGHT TESTIFY AT THE TRIAL, so that this man can prepare his defense properly with the assistance of his attorney and/or witnesses which he may desire to call.

7. Mr. Anthony R. Santacrose had pled 'not guilty' to these charges and he has not attempted to influence any government witnesses.

8. It should also be pointed out that Vincent Christina, who is accused of besting a grand jury witness on account of his testifying, as Mr. Welch would have us believe, is not indicted on any of the charges concerning the alleged gambling operation.

9. I would also like to point out that Mr. Anthony R. Santacrose hardly knows Mr. Christina and/or Mr. Maruca.

Reply Affidavit of 4-8-75 of Attorney Remo A. Allio.

10. That, upon information and belief, many of the so-called government witnesses have already told the defendants that they were subpoenaed to testify and/or that they made statement to the federal authorities and I have been informed that the defendants have told these witnesses that they sympathize because they had to testify, but that to testify and tell the entire truth, because there was nothing to hide from a federal point of view.

11. That in the final analysis and final conclusion, Anthony R. Santacrose is innocent and we would like to know who the government is going to produce to testify against him because we would like to find out something about the government witnesses for the purpose of possible impeachment and, as the attorney for Mr. Santacrose, I would like to test his mind and memory as to what transactions he had with any of the people who were going to testify against him, therefore, I suggest that, as in regards to the witnesses which the government will use to testify against Mr. Santacrose, that there is nothing in Mr. Santacrose's background which would suggest that these witnesses are in danger of being executed (Mr. Santacrose has no criminal record) and that the affidavit of Mr. Welch certainly does not apply to Mr. Santacrose and if the Order which the government is seeking is granted, it should not be granted as against the witnesses who will testify against Mr. Santacrose, and I ask the attorney again, what can they say against Mr. Santacrose that would justify the Court using its discretionary power to deprive Mr. Santacrose of the full opportunity to defend himself.

WHEREFORE, I respectfully request that the government's motion be denied and/or that if the motion is granted, that it should not be granted as against Mr. Santacrose, and that the names of all witnesses who will testify against him be revealed to the defense, so that Mr. Santacrose, who is pre-

Reply Affidavit of 4-8-75 of Attorney Remo A. Allio.

sumer's innocent, and whose background is beyond reproach, be given the full opportunity to defend himself against the charges lodged against him.

Dated: April 8, 1975

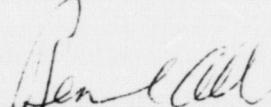

REMO A. ALLIO

STATE OF NEW YORK:

SS.:

COUNTY OF BROOME:

I, REMO A. ALLIO, being duly sworn, state that I have read the above affidavit and know the contents thereof and the same are true to my knowledge except as to those matters alleged upon information and belief and as to those matters I believe them to be true.


REMO A. ALLIO

Sworn to before me this 8th

day of April, 1975.

LOUISE B. GRASS
Notary Public, State of New York
Residing in Broome County
My commission expires March 30, 19

Reply Affidavit of 4-8-75 of Attorney Remo A. Allio.

To:
HONORABLE EDMUND FORT
United States District Judge
United States Courthouse
Albany, New York 12021

HON. JOSEPH P. SCULLY CLERK
United States District Court
Federal Building
Utica, New York 13501

HAROLD J. BOREANAZ, Esq.
736 Brisbane Bldg.
Buffalo, NY 14203

EUGENE WELCH,
Asst. U.S. Attorney
Federal Building
Syracuse, NY 13201

MICHAEL J. DESISTI, Esq.
101 Hayden St.
Syracuse, NY 13240

DANTE M. SCACCIA, Esq.
300 Wilson Bldg.
306 So. Salina St.
Syracuse, NY 13202

**Transcript of 4-14-75 Hearing on Government's Motion
of 3-27-75.**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA 74-CR-142

-against-

FRANK S. CANNONE, et al 74-CR-144

-against-

RAYMOND D. MASIARELLI and

LAWRENCE SCHULTZ

The following proceedings took place on the 14th day of April, 1975, at the United States District Court, Federal Building, Syracuse, New York, before HONORABLE EDMUND PORT, United States District Judge.

A P P E A R A N C E S:

HONORABLE JAMES M. SULLIVAN
United States Attorney
EUGENE WELCH
Assistant United States Attorney
Of Counsel
Attorney for U. S. of America

DANTE M. SCACCIA, ESQ.
Attorney for Defendants Masciarelli and McGrath
Remo A. Allio, Esq.
Attorneys for Tony Sanacross
Michael J. DeSisti, Esq.
Attorney for Andrew Quinlan

Transcript of 4-14-75 Hearing on Government's
Motion of 3-27-75.

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THE CLLRK: United States of America against
Frank S. Cannone et al and United States of America
against Raymond D. Masciarelli and Lawrence Schultz.

MR. WELCH: Ready for the Government.

MR. SCACCIA: Ready.

MR. WELCH: Good morning Your Honor. If I might
note for the record that the Government has filed this
motion in both cases, United States against Cannone
which is 74-CR-142 and Unites States against Masciarelli
74-CR-144 since all discovery proceedings held to this
point were jointly in both cases.

I would also like to put on the record that I am
tendering to the Clerk for filing in this case and
delivering to Your Honor the materials mentioned in
our paragraph 8 of my moving affidavit, material sub-
mitted for the court's inspection in camera.

THE COURT: I have not seen them.

MR. WELCH: No, this is the first time I have
submitted it.

THE COURT: All right, let me see that.

(Documents handed to court.)

MR. WELCH: If Your Honor please, the Government's
motion is simply in the context of requesting that
Your Honor exercise discretion in vacating that part
of your order which required the pre-trial disclosure

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Transcript of 4-14-75 Hearing on Government's
Motion of 3-27-75.

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of all our witnesses that we intend to call in our case in chief. Our position is simply that this is a case where such broad discovery is not appropriate, and we base that upon our showing in our affidavit in which a witness before the Grand Jury was beaten, as alleged in the indictment, on account of his testimony before that grand jury, and in addition as we have alleged in our affidavit, there are indications that there are at least two other incidents where witnesses have been attempted to be influenced in this case.

On that basis, balanced against absolutely no showing by the defense other than the mere statement that it would be helpful in preparation for trial, we submit this is a case where Your Honor should rule against the demand for discovery of all witnesses.

I might also note, Your Honor, that on page 9 of the transcript of the January 13 hearing on the discovery motions, this transcript I received this morning, Your Honor, the only mention made of the list for government witnesses is the statement by Mr. Scaccia that he made a demand for the witnesses and the Government has refused, and doesn't know of any authority that entitles him to pursue that. And that is the end of the discussion of that demand, Your Honor.

In the face of what is almost a withdrawal of

Transcript of 4-14-75 Hearing on Government's
Motion of 3-27-75.

demand, Your Honor, absolutely no showing of need and a showing by the Government of why such broad disclosure should not be made, we request you vacate that part of your order.

THE COURT: You say that you allege two attempts to influence or intimidate witnesses, where is the proof of that, is that in these?

MR. WELCH: In the materials I have just submitted to Your Honor.

THE COURT: In camera?

MR. WELCH: Yes, and in addition Count III of the indictment alleges, which is a finding by a grand jury, that two of these defendants beat one of the Government's witnesses.

THE COURT: That I am aware of, I arraigned him on that and I have severed that trial, isn't this the case where I have severed?

MR. WELCH: Yes, that Count is severed, but regardless, Your Honor, it is our position that these defendants are clearly capable of attempting to influence witnesses, and I have received some --

THE COURT: I don't mind their influencing them, I don't want them influenced with fists or threats, that's all.

MR. WELCH: I think there are even more subtle --

Transcript of 4-14-75 Hearing on Government's
Motion of 3-27-75.

more subtle influences, just glances can be influential to witnesses.

THE COURT: I am getting a glance from counsel now, and so are you. If glances could kill, you would be a dead man.

MR. WELCH: I submit in the circumstances of this

--

THE COURT: And he is a good looking counsel there, too.

MR. WELCH: That is not a very serious matter, but out in the streets of Binghamton when one defendant looks at a witness that they are told is going to be a witness against him, that might kill the Government's case, and we ask you vacate that part of your order.

THE COURT: I will hear counsel.

MR. SCACCIA: May it please the Court, let me say at the outset that Your Honor is entirely correct, the Count of the original indictment that had to do with a beating of a witness has been severed. Moreover, underlying that decision, as I recall the arguments by counsel, and we were not privy --

THE COURT: Let me ask you this, I don't have the original notes here. You appeared on the return of the discovery motion?

Transcript of 4-14-75 Hearing on Government's
Motion of 3-27-75.

MR. SCACCIA: Yes.

THE COURT: Were there any other attorneys?

MR. SCACCIA: Yes, Your Honor, I was just going to make mention of that to refresh Your Honor. As I recall Mr. Boreanz -- all attorneys appeared, Mr.

Boreanz appeared, he was then representing a limited number of defendants. My recollection is unclear as to whether at that time he represented the defendant in Count III or not. In any event he now does, but it seems to me that -- and all other counsel present here constituted the balance of the defense lawyers.

THE COURT: Because I do recall when a question of the names of witnesses came up and I asked for some authority, I was fairly well convinced that it is a matter of discretion, and it has been my policy in the usual case to exercise the discretion in favor of disclosure, and I had notes to that effect, but when I asked you for authority to determine whether or not there was any authority for production, you made the comment, in substance, that the record shows?

MR. SCACCIA: That's correct, Judge, and I just wanted to add to that that in my papers I had cited specifically that the proposed changes in the Federal rules may -- made provisions for such disclosure on request, and I had cited --

Transcript of 4-14-75 Hearing on Government's
Motion of 3-27-75. 7

THE COURT: Don't they also carry forward the limitations you found in some of the cases, unless there is some reason not to?

MR. SCACCIA: I think that is entirely so, if it would not, I would concede it is implicit.

THE COURT: All right.

MR. SCACCIA: And getting to that very quickly, Judge, number one, I know of no information at all with respect to any of these threats other than the Count III threats which were discussed in court and were severed, that count is severed. I don't know of any allegation or whether on the motion here the Government makes any allegations any of the balance of the defendant's Counts I and II are affected.

THE COURT: That is the problem. Let's assume for a minute that it is confined to just one or two defendants. If a witness is intimidated, the intimidation usually isn't departmentalized intimidation, "You better not testify," that is implicit, or explicit "against Judge Port," but "You better not testify in this case," is the intimidation and that is where you have the trouble of separating the bad apples from the good apples.

MR. SCACCIA: I fully agree, because the intimidation can run the full spectrum. If an outright

Transcript of 4-14-75 Hearing on Government's
Motion of 3-27-75.

threat of death, which would be the most serious kind of threat, all the way from a subtle glance which could be interpreted a number of ways, I think is a matter that really defense counsel and the court ought to have presented in the form of affidavits by the Government. We ought to be able to meet the charges it would seem to me.

THE COURT: It seems to me that you can't meet them unless you are supplied with the material. On the other hand, supplying you with the material would be of no value unless you verified it with the alleged culprits, and once you propose to verify, if there is any substance at all to it, it becomes worthless.

MR. SCACCIA: And I can understand that, Judge, but it hardly seems fair to have counsel tarnished with that kind of a brush, because if there is any allegations affecting any of the clients I represent, for my part I would like to know about it. Moreover, I think it is a duty of counsel as an officer of the court to even assist the court in due administration of justice to see there is nothing like that in that case and to do whatever we can as lawyers.

THE COURT: Of course counsel are not going to be privy to any such shenanigans, I would be reasonably

Transcript of 4-14-75 Hearing on Government's
Motion of 3-27-75.

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certain of that. You are not going to know, or any other counsel is not going to know unless it is in connection with a charge that is made that you would be obliged to know, but other than that, of course, if counsel doesn't know -- I couldn't conceive of counsel being a party to that type of business.

MR. SCACCIA: I am willing to go further than that, that we have a duty to cease and desist and put to early death any intimidation if such exists.

THE COURT: That all depends on everybody's personal view of what is appropriate and what isn't, too.

You didn't mean to kill anybody with a glance?

MR. DE SISTI: I certainly didn't, all I can say is that my client Andrew Quinlan lives in Sayre, Pennsylvania, which is approximately 45 miles from Binghamton, and what transpired and what they do in Binghamton we have no knowledge of and we don't feel we are responsible for.

THE COURT: It is a small world, 45 miles.

MR. DE SISTI: But what I have been able to read from the transcript and so forth I am at a loss to find how my client is involved in any way whatsoever, and I find I need all the information and all

Transcript of 4-14-75 Hearing on Government's
Motion of 3-27-75.

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the facts that the Government has to place at my disposal so I can properly prepare a defense for my client, and this is why I feel under the circumstances we certainly need the names of the witnesses, and of course we all agree that the courts have gone both ways, but in this case, wiretapping case, I feel we really need it.

Thank you.

THE COURT: All right.

MR. ALLIO: May it please the Court --

THE COURT: That was quite a sensational brief you wrote.

MR. ALLIO: I don't write briefs, I just write the way I feel.

THE COURT: That is quite a document. I wish I had jurisdiction to send you to the United Nations, I would send you and the Indians.

MR. ALLIO: You know, digressing from the point, Congress is saying Federal Courts are so congested, and when they make any -- every justice court a Federal Court you are going to have a lot more congestion. However, be that as it may, I would like to say from all that I have read and from my experience it isn't the defendants that tries to influence the witness with threats, it is the United States

Government that tries to influence the witnesses with threats.

Now in this particular case I have a defendant, who, contrary to the Attorney General's statement, is not capable of influencing any witness. His background is as good as any person whom you could possibly -- any person whom you possibly meet on any street corner. He is a good family man. He has no criminal record. He definitely is not capable of influencing any witnesses or doing any harm to anybody, and the inference --

THE COURT: The trouble is, supposing I did this, supposing I were to say "all right, I will direct the Government to furnish the names of the witnesses to counsel, counsel are not to disclose --

MR. ALLIO: Beautiful.

THE COURT: How can you prepare anything if I give you the name of Edmund Port as a witness and you are interested in knowing whether Edmund Port is an informer or not, how can you ascertain that without talking to your client about it?

MR. ALLIO: I have to talk to my client about it, but my client is not the type of guy that is going to go out and do anybody any harm.

THE COURT: But it isn't only your client, you

see, that is exactly it, you miss the point. As soon as the information is made available to the client, and it has to be, of course, it shows the futility of issuing that kind of an order, because you give with one hand and take away with the other. It is an ignoble thing to do, really.

MR. ALLIO: On the other hand, how can I defend unless what -- unless I know what I am defending against? Not only that, but I have taken the time and trouble to listen to these wiretaps they have as it pertains to my client, and I welcome that each and every one of them be introduced as evidence, because it shows my client is merely a bettor, and I have been scratching my head, where is the gun with the smoke on it? I want to know who is it that is testifying against my client, who is it that made any statement against my client?

My client tells me up and down that he is merely a bettor. Where did he enter this conspiracy? Who is saying that he has any part of this conspiracy? Who is saying that he has an interest in this book-making enterprise?

I would like to know. I feel if I don't know, that I am going to be hampered, that I am not going to be able to prepare a proper defense, and I mean

that sincerely, because I certainly have a right to know who the accuser is, that is what it amounts to, and I think that is a basic right, who said these things against my client?

THE COURT: Of course that isn't -- what was it, a dice game?

MR. ALLIO: They are betting on football, and they were betting on baseball and basketball.

THE COURT: This is a bookmaking charge?

MR. ALLIO: Yes.

THE COURT: That is a little different.

MR. ALLIO: This influencing and intimidating, Your Honor, just is not there, really is not there. As a matter of fact, to the contrary you know these guys are --

THE COURT: You have convinced me, but if you can do as well with the jury, you are in great shape.

MR. ALLIO: I am looking forward to it.

THE COURT: Well, here is my problem, gentlemen. Of course I haven't had an opportunity to read this material that has been given to me. It could be overapprehension on the part of the prosecution, it could be anecessary or conceivably necessary precaution under the circumstances.

My usual inclination is to grant the names of

witnesses. My usual inclination is to say to the prosecutor "You can open up your file," and that is the way you get pleased, but I am sufficiently realistic to know in dealing with some defendants that it is not appropriate nor is it wise. What the situation is here I don't know.

Generally speaking the only damage that can come to a defendant by reason of the failure to have the names of witnesses, and this has happened to me in the course of trials, is that a counsel is not prepared to cross examine the witness, that is, he hasn't had a chance to check his criminal record, the U.S. Attorney hasn't disclosed it, or some such thing, he hasn't known about him in advance. That happens rarely, defendants usually know. They know as much as, very often, or more often than the Government knows. But that situation has arisen. Now in my experience I have been very fortunate that it has arisen on a Friday morning. We just recess for the weekend, or if it happens on a Thursday, stop right then and there, take a recess and you have three or four days and you have got the benefit of it. So it is always curable, it is never fatal. Now whether you rely on that or not I don't know, but I certainly couldn't decide this motion without looking at the

material.

Now I will tell you that the order I drew was in fact an error on my part. When I looked at my notes my notes showed that I directed the wiretap, and I didn't direct, according to my notes, I didn't direct any witnesses names. I did that primarily to balance it, because the defendant's didn't show any particular need. When I asked Mr. Scaccia about authority, everybody enjoyed silence. That is the balance then when I prepared the order, which was sometime later. This was as a result of Mr. Welch's sickness I made the blunder, including something that I am sure if you examine the transcript you will find wasn't there, but the order was issued, I have not gotten to consider seriously whether it should remain.

I will do that, and this time I will draw an order in keeping with what I really mean.

MR. ALLIO: I have already suggested to Mr. Welch that if he could show me by some competent evidence that my man is guilty of the charge, that would be the end of it.

THE COURT: Well, I am sure that is usually the case, but I am not a prosecutor.

MR. ALLIO: I would like to remind the court that Mr. Sanacross requested that he be given the

Transcript of 4-14-75 Hearing on Government's
Motion of 3-27-75.

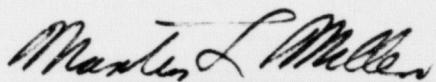
16

opportunity to take a polygraph test.

THE COURT: I heard that on the arguments to dismiss, but that is up to the prosecution. Of course obviously my rulings are rulings on law. I don't mean to preclude you from making any suggestions at all that you have to the prosecution if you feel it would induce them to concede your man should not be prosecuted.

*****"

This is to certify that the foregoing is a true and accurate transcript of the proceedings heard at the time and place noted in the heading hereof.



MARTIN L. MILLER
MARTIN L. MILLER
Official Reporter
United States District Court
Northern District of New York

**Order by Honorable Edmund Port,
dated 4-18-75.**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

FRANK S. CANNONE, STANLEY A. RAPPUCCI,
THOMAS A. GAETANI, JON N. ENGLISH,
JOSEPH N. MARUCA, VINCENT N. CHRISTINA,
ANTHONY R. SANTACROSE, JR., RAYMOND D.
MASCIARELLI, JAMES W. McGRATH, ANDREW J.
QUINLAN and THOMAS J. ABBADESSA.

74-CR-142

UNITED STATES OF AMERICA,

v.

74-CR-144

RAYMOND D. MASCIARELLI and LAWRENCE SCHULTZ.

APPEARANCES:

JAMES M. SULLIVAN, JR.
United States Attorney
Federal Building
Syracuse, New York 13201
Attorney for United States

EUGENE WELCH
Assistant U.S. Attorney
Of Counsel

REMO A. ALLIO, ESQ.
19 Washington Avenue
Endicott, New York 13760

HAROLD J. BOREANAZ, ESQ.
736 Brisbane Building
Buffalo, New York 14203

MICHAEL J. DESISTI, ESQ.
101 Hayden Street
Sayre, Pennsylvania 18840

DANTE M. SCACCIA, ESQ.
300 Wilson Building
306 South Salina Street
Syracuse, New York 13202

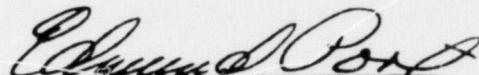
Order by Honorable Edmund Port, dated 4-18-75.

EDMUND PORT, Judge

ORDER

United States having moved for an order vacating that part of an order dated March 11, 1975, requiring that the Government supply the defendants' attorneys with the names and addresses of all Government witnesses which the Government intends to call in the presentation of its case in chief, and said motion having come on to be heard on April 14, 1975 and the court having considered the affidavits submitted, the arguments of the parties and the materials submitted by the Government for in camera examination, which materials have been sealed by the court, and upon all of the proceedings had herein, it is

ORDERED, that the motion be and the same hereby is denied.


United States District Judge

Dated: April 18, 1975
Auburn, New York

**Letter of Eugene Welch, Assistant U.S. Attorney
to Honorable Edmund Port, dated 4-30-75.**

United States Department of Justice

**UNITED STATES ATTORNEY
NORTHERN DISTRICT OF NEW YORK
FEDERAL BUILDING
SYRACUSE, N. Y. 13201**

April 30, 1975

Hon. Edmund Port
United States District Judge
Northern District of New York
U.S.P.O. & Court House
Auburn, New York 13021

In re: United States v. Cannone, et al.
#74-CR-142, and United States v.
Masciarelli, et al. #74-CR-144

Dear Judge Port:

On March 11, 1975 you entered an order in part requiring the Government's pre-trial disclosure of the names and addresses of its witnesses presently intended to be called by it in presentation of its trial case in chief and, on April 18, 1975, you entered an order denying the Government's motion to vacate such portion of your earlier order.

We hereby request your review of such orders to incorporate an amendment thereto providing for a sanction against the Government for failure to make such disclosure within reasonable time limits fixed by you. Such amendment under Title 18, United States Code, Section 3731, would provide for an appealable order and avoid the Government's sole present choice or option of mandamus. We are presently awaiting the requested approval of the Solicitor General for review of such orders. We respectfully call your attention to United States v. Battisti, 486 F.2d 961 (6th Cir. 1973).

A copy of this letter is being mailed to each counsel of record for the defendants in the matter.

Respectfully submitted,

JAMES M. SULLIVAN, JR.
United States Attorney

By:

Eugene Welch
Assistant U. S. Attorney

EW:vam

Copy of Honorable Edmund Port's 5-1-75 Order.

*I certify that
This is a true copy

Attest 5/2/75

J. R. SCULLY
Clerk, U.S. District Court

By William Murphy
Deputy

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

vs.

FRANK S. CANNONE, STANLEY A. RAPPUCCI,
THOMAS A. GAETANI, JON N. ENGLISH,
JOSEPH N. MARUCA, VINCENT N. CHRISTINA,
ANTHONY R. SANTACROSE, JR., RAYMOND D.
MASCIARELLI, JAMES W. McGRATH, ANDREW J.
QUINLAN and THOMAS J. ABBADESSA.

74-CR-142

UNITED STATES OF AMERICA,

vs.

74-CR-144

RAYMOND D. MASCIARELLI and LAWRENCE SCHULTZ.

EDMUND PORT, Judge

ORDER

By Order dated March 11, 1975, the Government was directed inter alia to "supply the defendants' attorneys with the names and addresses of all Government witnesses which the Government intends to call in the presentation of its case in chief". By Order dated April 18, 1975, a motion to vacate said provision was denied.

The Government has brought to my attention the fact that they have not as yet complied with said Order, and have requested that the Order be amended to include sanctions for failure to make the disclosure ordered.

Upon due consideration, it is

ORDERED, that the Order dated March 11, 1975 be and it hereby

Copy of Honorable Edmund Port's 5-1-75 Order.

is amended by changing the period at the end thereof to a semi-colon and adding:

and it is further

ORDERED, that the disclosure of Government witnesses hereinabove ordered be made to each of the defendants' attorneys in writing on or before May 9, 1975. The testimony of any witness whose name and address has not been disclosed in accordance with this Order shall be excluded on the trial of this action.


United States District Judge

Dated: May 1, 1975
Auburn, New York

Notice of Appeal by Government.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Criminal No.
74-CR-142

v.
FRANK S. CANNONE, STANLEY A. RAPPUCCI, THOMAS A. GAETANI, JON N. ENGLISH, JOSEPH N. MARUCA, VINCENT N. CHRISTINA, ANTHONY R. SANTACROSE, JR., RAYMOND D. MASCIARELLI, JAMES W. MCGRATH, ANDREW J. QUINLAN and THOMAS J. ABBADESSA.

NOTICE OF APPEAL

UNITED STATES OF AMERICA

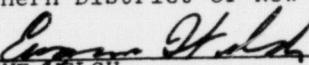
Criminal No.
74-CR-144

v.
RAYMOND D. MASCIARELLI and LAWRENCE SCHULTZ.

SIRS:

PLEASE TAKE NOTICE that the United States of America is hereby appealing to the United States Court of Appeals for the Second Circuit from the May 1, 1975 Order of the Honorable Edmund Port, United States District Court Judge, entered in the above-captioned cases, which order is an amendment to an earlier order dated March 11, 1975, entered in the above-captioned cases.

JAMES M. SULLIVAN, JR.
United States Attorney for the
Northern District of New York

By 
EUGENE WELCH
Assistant United States Attorney
Federal Bldg., P.O. Box 1258
Syracuse, N.Y. 13201
Telephone: 315 473-6660

TO: HONORABLE JOSEPH R. SCULLY, CLERK
United States District Court
Federal Building
Utica, N. Y. 13501

REMO A. ALLIO, ESQ.
19 Washington Avenue
Endicott, New York 13760

HAROLD J. BOREANAZ, ESQ.
736 Brisbane Bldg.
Buffalo, N. Y. 14203

MICHAEL J. DESISTI, ESQ.
101 Hayden Street
Sayre, Penna.

DANTE M. SCACCIA, ESQ.
300 Wilson Bldg.
306 S. Salina Street
Syracuse, N. Y. 13202

JAMES P. SHANAHAN, ESQ.
424 University Building
Syracuse, N. Y. 13202

5-27-75, Certification to Notice of Appeal and
its attached Government letter.

United States Department of Justice

IN REPLY
PLEASE REFER
TO OUR FILE.UNITED STATES ATTORNEY
NORTHERN DISTRICT OF NEW YORK
FEDERAL BUILDING
SYRACUSE, N. Y. 13201

May 27, 1975

Hon. J. R. Scully, Clerk
U. S. District Court
Federal Building
Utica, New York 13501

Attention: Allen Doggett, Deputy Clerk and Appeals Coordinator

RE: United States -v- Cannone, et al.,
United States -v- Masciarelli, et al.,
#74-CR-142, #74-CR-144

Dear Mr. Doggett:

Enclosed please find the government's Certification to Notice of Appeal, which should have been attached to the original Notice of Appeal filed in this action, and which is being filed at this time to comply with the provisions of Section 3731 of Title 18, United States Code. This Certification should be attached to the Notice of Appeal and forwarded to the Court of Appeals.

I am today causing a copy of this Certification to be served on the listed attorneys, along with a copy of this letter.

Thank you for your cooperation in this regard.

Very truly yours,

JAMES M. SULLIVAN, JR.
United States Attorney

Eugene Welch
Eugene Welch
Assistant U. S. Attorney

Enclosure
EW/vam

cc: Messrs. Allio, Boreanaz, DeSisti, Scaccia and Shanahan

S-27-75, Certification to Notice of Appeal and
its attached Government letter.IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA)	
V.)	
FRANK S. CANNONE, STANLEY A. RAPPUCCI, THOMAS A.	)	Criminal No.
GAETANI, JON N. ENGLISH, JOSEPH N. MARUCA,	)	74-CR-142
VINCENT N. CHRISTINA, ANTHONY R. SANTACROSE, JR.,)	
RAYMOND D. MASCIARELLI, JAMES W. MCGRATH,	)	<u>CERTIFICATION TO</u>
ANDREW J. QUINLAN and THOMAS J. ABBADESSA.	)	<u>NOTICE OF APPEAL</u>
UNITED STATES OF AMERICA)	
V.)	
RAYMOND D. MASCIARELLI and LAWRENCE SCHULTZ	)	Criminal No.
		74-CR-144

STATE OF NEW YORK) ss.:
COUNTY OF ONONDAGA)

I, EUGENE WELCH, being duly sworn, depose and say:

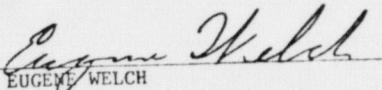
1. I am an Assistant United States Attorney to James M. Sullivan, Jr.,

United States Attorney for the Northern District of New York, and I am duly assigned to represent the Government in all proceedings in the above-captioned actions.

2. On May 1, 1975, the Honorable Edmund Port, United States District Court Judge, issued an order excluding the testimony of any witnesses whose names and addresses are not disclosed by the Government pursuant to Judge Port's March 11, 1975 Order, requiring pre-trial disclosure.

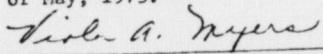
3. I have caused to be filed a Notice of Appeal from that May 1, 1975 Order, which was filed herein on May 8, 1975.

4. I hereby certify to the District Court that this appeal is not taken for purpose of delay and that the evidence, that is the testimony of these witnesses, is a substantial proof of a fact material in the above-captioned proceedings.



EUGENE WELCH

Subscribed and sworn to
before me this 27th day
of May, 1975.



Viola A. Myers

Notary Public

VIOLA A. MYERS
Notary Public in the State of New York
Qualified in Onondaga County
My Commission Expires March 30, 1976

TO: HONORABLE JOSEPH R. SCULLY, CLERK
United States District Court
Federal Building
Utica, New York 13501

REMO A. ALLIO, ESQ.
19 Washington Avenue
Endicott, New York 13760

5-27-75, Certification to Notice of Appeal and
its attached Government letter.

HAROLD J. BOREANAZ, ESQ.
736 Brisbane Bldg.
Buffalo, N. Y. 14203

MICHAEL J. DESISTI, ESQ.
101 Hayden Street
Sayre, Penna. 18840

DANTE M. SCACCIA, ESQ.
300 Wilson Building
306 S. Salina Street
Syracuse, N. Y. 13202

JAMES P. SHANAHAN, ESQ.
424 University Building
Syracuse, New York 13202

5-7-75, Motion and Supporting Affidavit to Stay Pending Appeal
by the Government.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Criminal No.
74-CR-142

v.

FRANK S. CANNONE, STANLEY A. RAPPUCCI,
THOMAS A. GAETANI, JON N. ENGLISH, JOSEPH N.
MARUCA, VINCENT N. CHRISTINA, ANTHONY R.
SANTACROSE, JR., RAYMOND D. MASCIALELLI,
JAMES W. MCGRATH, ANDREW J. QUINLAN and
THOMAS J. ABBADESSA.

NOTICE OF MOTION

UNITED STATES OF AMERICA

Criminal No.
74-CR-144

v.

RAYMOND D. MASCIALELLI and LAWRENCE SCHULTZ.

SIRS:

PLEASE TAKE NOTICE that, pursuant to Rule 45 of the Federal Rules of Criminal Procedure, and Rule 8 of the Federal Rules of Appellate Procedure, the United States of America will move this Court at the U. S. Post Office and Courthouse, at Auburn, New York, 10:00 A.M., on May 8, 1975, or as soon thereafter as counsel can be heard, for an order shortening the required time for notice of motions required by Rule 45, or granting leave to proceed ex parte, and adjourning the trials of the above-captioned matters until fifteen days after a final ruling of the United States Court of Appeals for the Second Circuit, on the government's appeal from Judge Port's pre-trial discovery order, and staying the effective date of the March 11, 1975 and May 1, 1975 orders until fifteen days after the effective date of any such ruling by the Second Circuit Court of Appeals, as more particularly stated in the attached affidavit in support of this motion.

JAMES M. SULLIVAN, JR.
United States Attorney for the
Northern District of New York

Dated: May 7, 1975

By Eugene Welch
EUGENE WELCH
Assistant United States Attorney
Federal Building, P.O. Box 1258
Syracuse, New York 13201
Telephone: 315 473-6660

5-7-75, Motion and Supporting Affidavit to Stay Pending
Appeal by the Government.

TO: HONORABLE EDMUND PORT
United States District Judge
U.S.P.O. & Courthouse
Auburn, New York 13021

HON. JOSEPH R. SCULLY, CLERK
United States District Court
Federal Building
Utica, New York 13501

REMO A. ALLIO, ESQ.
19 Washington Avenue
Endicott, N. Y. 13760

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300 Wilson Building
306 South Salina Street
Syracuse, New York 13202

JAMES P. SHANAHAN, ESQ.
424 University Building
Syracuse, New York 13202

5-7-75. Motion and Supporting Affidavit to Stay Pending
Appeal by the Government.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

Criminal No.
74-CR-142

FRANK S. CANNONE, STANLEY A. RAPPUCCI,
THOMAS A. GAETANI, JON N. ENGLISH,
JOSEPH N. MARUCA, VINCENT N. CHRISTINA,
ANTHONY R. SANTACROSE, JR., RAYMOND D.
MASCIARELLI, JAMES W. MCGRATH, ANDREW
J. QUINLAN AND THOMAS J. ABBADESSA.

AFFIDAVIT IN SUPPORT
OF GOVERNMENT'S
MOTION FOR STAY
PENDING APPEAL

UNITED STATES OF AMERICA

v.

Criminal No.
74-CR-144

RAYMOND D. MASCIARELLI and
LAWRENCE SCHULTZ.

STATE OF NEW YORK)
 : ss.:
COUNTY OF ONONDAGA)

I, EUGENE WELCH, being duly sworn, depose and say:

1. I am an Assistant United States Attorney in charge of the prosecution of the above-captioned cases.

2. On November 18, 1974 the above-captioned defendants were indicted in the above-captioned cases.

3. On December 10, 1974 all defendants, except Lawrence Schultz, were arraigned and pled not guilty.

4. On December 12, 1974 the United States filed its Notice of Readiness for Trial in the case of United States v. Cannone, et al., #74-CR-142. The government did not file a notice of readiness in the case of United States v. Masciarelli and Schultz, since Mr. Schultz had not yet been arraigned. Upon resolution of the appeal concerning this pre-trial disclosure ordered by Judge Port discussed more fully below, the United States intends to note its readiness in the case of United States v. Masciarelli and Schultz, #74-CR-144.

5. On January 13, 1975 arguments were heard on defense

5-7-75. Motion and Supporting Affidavit to Stay Pending
Appeal by the Government.

motions for pre-trial discovery and partial discovery was granted. Due to the illness of government counsel no formal order of the January 13 ruling was entered until March 11, 1975. In the March 11, 1975 Order, the Honorable Edmund Port ordered, among other things, the pre-trial disclosure of the government's witnesses.

6. On April 14, 1975 the Court here heard argument of the government's motion to vacate that portion of the March 11, 1975 order requiring pre-trial disclosure of the government's witnesses and on April 18, 1975 the Court entered an order denying that motion.

7. Your affiant received a copy of the April 18 order on April 21, 1975 and proceeded immediately on April 21, 1975 to telephonically contact my superiors in Washington, D. C. for advice and authorization to appeal this ruling. On April 30, 1975 your affiant was requested by the Office of the Solicitor General in Washington, D. C. to attempt to avoid the necessity of filing a petition for a writ of mandamus against Judge Port in the Second Circuit Court of Appeals by requesting that the Court impose sanctions for non-compliance with the March 11 order, which sanctions would then make the matter appealable. By letter dated April 30, 1975 your affiant respectfully requested that the Court impose some sanction so that this order would be appealable. By order of May 1, 1975, the Honorable Edmund Port ordered that the government disclose its witnesses by May 9, 1975 or else the testimony of any witnesses not so disclosed would be excluded on trial of these actions. Your affiant received a copy of this May 1, 1975 order on May 5, 1975. On May 7, 1975 your affiant received telephonic authorization from the Office of the Solicitor General of the United States to file a notice of appeal from Judge Port's May 1, 1975 order imposing sanctions and thereby appeal that ruling to the United States Court of Appeals for the Second Circuit.

5-7-75. Motion and Supporting Affidavit to Stay Pending
Appeal by the Government.

8. These above-captioned cases are presently No. 1 and No. 2 on the Trial Calendar scheduled to be called on May 30, 1975 at Auburn, New York for trial on or after June 2, 1975.

9. Your affiant respectfully submits that until a final resolution of the correctness of this Court's ruling requiring pre-trial disclosure of the government's witnesses is made by the Court of Appeals, it would be unfair to the defense and the prosecution to force this case to trial in its present posture. If the Court of Appeals rules that the defense is entitled to these lists of witnesses in view of the facts in this case, they should receive them in sufficient time to prepare for trial. If the Court of Appeals rules that the defense is not entitled to these witnesses, then it is unfair to the government to exclude the testimony of these witnesses at trial, should one of these matters be reached for trial on June 2. In this regard, the government submits it is important to note that the above-captioned matters will involve three separate trials, only one of which could possibly be tried in the month of June. In view of the small basic jury panel selected in this district to try cases, the remaining trials would have to be postponed until September at Syracuse, New York in order to insure an unbiased jury.

10. The government is today filing a notice of appeal (attached hereto as Exhibit "A") and intends to pursue this appeal with the utmost dispatch. There is the possibility that the Court of Appeals will dispose of the matter prior to the end of the June trial term but it is more certain that the Court of Appeals will have disposed of this appeal in time for adequate preparation for the September trial term.

11. Rule 45 of the Federal Rules of Criminal Procedure normally requires at least five days notice for any motion to be heard unless the time is altered by the Court. The government respectfully submits that since it is required by Rule 8, Federal Rules of Appellate Procedure, that an application for a stay pending appeal be made first in the District Court and then, if denied by the District Court, in the Court of Appeals, and since the deadline of May 9 for disclosure of the witnesses is almost

S-7-75, Motion and Supporting Affidavit to Stay Pending
Appeal by the Government.

here, there is sufficient cause shown for shortening the normal notification period and for leave to proceed ex parte if necessary, that is, if defense counsel cannot be notified in time to appear at 10:00 A.M. on May 8, 1975.

12. The government respectfully submits that in view of the seriousness of the questions involved in the appeal and the fact that an orderly resolution of these appeal questions will benefit both the government and the defense, and in view of the fact that the case is not yet six months old and none of the defendants is in custody, the defense will not be prejudiced by any adjournment of the trials of these matters until the September 1975 term of Court, nor will it be prejudiced by a stay of the May 1, 1975 discovery order.

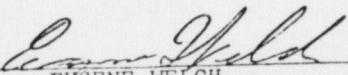
13. The government respectfully submits that the delay caused by this appeal and the stay and adjournment requested herein can be excluded from the running of the "six months" rule of this District under Rules 5(a), 5(c)(ii), and 5(h), "PLAN FOR ACHIEVING PROMPT DISPOSITION OF CRIMINAL CASES" (effective April 1, 1973, N.D. N.Y.).

WHEREFORE, the government respectfully requests that this Court issue an order:

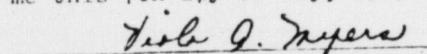
1. allowing this matter to be heard ex parte or on short notice, if notice is possible;
2. adjourning all trials in this matter until at least fifteen days from the date of a final ruling by the United States Court of Appeals for the Second Circuit on the government's appeal from the May 1, 1975 Order of this Court, or for such further period of time as by the Court may be ordered; and

3. staying the March 11, 1975 and May 1, 1975 orders requiring pre-trial disclosure of the government's witnesses by May 9, 1975, for the same period of time.

Dated: May 7, 1975
Syracuse, New York


EUGENE WELCH
Assistant United States Attorney

Sworn and subscribed to before
me this 7th day of May, 1975.



VIOLA A. MYERS
Notary Public in the State of New York
Qualified in Onondaga County
My Commission Expires March 30, 1976

5-7-75, Motion and Supporting Affidavit to Stay Pending
Appeal by the Government.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Criminal No.
74-CR-142

v.
FRANK S. CANNONE, STANLEY A. RAPPUCCI, THOMAS A.
GAETANI, JON N. ENGLISH, JOSEPH N. MARUCA,
VINCENT N. CHRISTINA, ANTHONY R. SANTACROSE, JR.,
RAYMOND D. MASCIARELLI, JAMES W. MCGRATH, ANDREW
J. QUINLAN and THOMAS J. ABBADESSA.

NOTICE OF APPEAL

UNITED STATES OF AMERICA

Criminal No.
74-CR-144

v.
RAYMOND D. MASCIARELLI and LAWRENCE SCHULTZ.

SIRS:

PLEASE TAKE NOTICE that the United States of America is hereby appealing to the United States Court of Appeals for the Second Circuit from the May 1, 1975 Order of the Honorable Edmund Port, United States District Court Judge, entered in the above-captioned cases, which order is an amendment to an earlier order dated March 11, 1975, entered in the above-captioned cases.

JAMES M. SULLIVAN, JR.
United States Attorney for the
Northern District of New York

By *Eugene Welch*
EUGENE WELCH
Assistant United States Attorney
Federal Bldg., P.O. Box 1258
Syracuse, N.Y. 13201
Telephone: 315 473-6660

TO: HONORABLE JOSEPH R. SCULLY, CLERK
United States District Court
Federal Building
Utica, N. Y. 13501

REMO A. ALLIO, ESQ.
19 Washington Avenue
Endicott, New York 13760

HAROLD J. BOREANAZ, ESQ.
736 Brisbane Bldg.
Buffalo, N. Y. 14203

MICHAEL J. DESISTI, ESQ.
101 Hayden Street
Sayre, Penna.

DANTE M. SCACCIA, ESQ.
300 Wilson Bldg.
306 S. Salina Street
Syracuse, N. Y. 13202

JAMES P. SHANAHAN, ESQ.
424 University Building
Syracuse, N. Y. 13202

5-8-74 Transcript of Proceedings on the Government's
Motion.UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK-----
UNITED STATES OF AMERICA-----
-against-FRANK S. CANNONE, STANLEY A. RAPPUCCI,
THOMAS A. GAETANI, JON N. ENGLISH,
JOSEPH N. MARUCA, VINCENT N. CHRISTINA,
ANTHONY R. SANTACROSE, JR., RAYMOND D.
MASCIARELLI, JAMES W. McGRATH, AANDREW J.
QUINLAN and THOMAS J. ABBADESSA

74-CR-142

UNITED STATES OF AMERICA-----
-against-

73- R-144

RAYMOND D. MASCIARELLI and LAWRENCE SCHULTZ

The following proceedings took place on the 8th
day of May 1975, at the United States District Court,
Federal Building, Auburn, New York, before HONORABLE
EDMUND PORT, United States District Judge.

APPEARANCES:

JAMES M. SULLIVAN
United States Attorney
EUGENE WELCH
Assistant United States Attorney
Attorney for U. S. of America
Federal Building
Syracuse, New York

MR. WELCH: Your Honor, I believe you are aware of the history of the case.

THE COURT: I am, and I have had a chance to look at it. This notice of motion that was filed with the clerk this morning --

MR. WELCH: That's right, it was filed this morning. It was rather hastily drawn upon the receipt of the authorization from the Solicitor General's office to proceed.

I can advise the court that between four and approximately five-twenty last night I personally made efforts to contact each one of the attorneys in this case by telephone, to advise them they were receiving in the mail this notice of motion, and part of our relief was for leave to proceed either ex parte this morning or with the short notice of that telephone call.

The results were, Your Honor, that at four p.m. I contacted Mr. James P. Shanahan, who represents Mr. Schultz in 74-CR-144. Mr. Shanahan indicated that he could not make it this morning, and he also said words to the effect that he had nothing to say about the motion for the stay at this time.

I contacted the office of Mr. Harold Boreanaz who represent at this stage of the proceedings, as I

5-8-75 Transcript of Proceedings on the Government's Motion.

understand, Mr. Cannone, Mr. Rappucci, Mr. Gaetani, Mr. Maruca and Mr. Abbadessa, and Mr. Boreanaz, I was informed, was in Federal Court in Buffalo this morning and would not be able to make it, but Mr. Baker, an associate at Mr. Boreanaz' firm was in but was on the telephone.

I related the message to the secretary that we would be appearing here this morning for this relief, seeking a stay and an adjournment of the trial either ex parte, or if they could arrive, on an adversary hearing, and requested that Mr. Baker call me back if he had any questions.

As of 9:30 this morning he had not called back to my office in Syracuse.

I do note, Your Honor, it is my understanding Mr. Baker likewise represents defendant Maruca in a local court proceeding stemming from a state violation that resulted from the investigation that -- or that was discovered during the investigation of these cases, and it is my understanding through the state court proceeding he is fairly well aware of the nature of the action here.

As to Attorney Desisti, who represents Mr. Quinlan, he maintains his offices in Sayre, Pennsylvania. I was unable to get an answer at Mr. Desisti's

office. I made a note of the time being 4:48 yesterday afternoon and letting the 'phone ring for twelve rings, so Mr. Desisti was not contacted by telephone.

Mr. Allio, who represents the defendants Santacrose and Christina, I was able to contact him at his home and he indicated that he could not make it here this morning, and he also said that he could not oppose the motion, for whatever reason I don't know, but that is what he said to me.

I contacted the office of Mr. Dante Scaccia at 4:50 p.m. yesterday afternoon and was told Mr. Scaccia had left for Albany, New York, and would not be in contact with the office until after his return from Albany, and he was going to Albany today. However, at 5:20 last night, Mr. Scaccia did call me back, indicated they were able to get through to him. I advised what we were seeking and he advised me he had no objection to a reasonable stay. I said, "I don't know what you mean by a reasonable stay, but what we are seeking is a stay of the trial until 15 days after the final ruling from the Court of Appeals."

Mr. Scaccia said, "I still have no objection and you can quote me to the court."

That, Your Honor, is all I have to say in regard to the notice I have sent to each one of these

5-8-75 Transcript of Proceedings on the Government's
Motion.

5.

defense attorneys or have given them by telephone.

In view of the fact Your Honor's order takes effect tomorrow and the ultimate effect of it would be the exposition of the testimony of the government witnesses, I requested we proceed ex parte this morning since I note no one has appeared for the defendants in this case.

The second item of relief is an adjournment of all three trials, 74-CR-142 and 74-CR-144 until at least 15 days after the Court of Appeals has finally ruled.

I would like to note, Your Honor, that per the usual custom of the Circuit Court of Appeals the case no doubt will be heard by a panel of three judges, and a similar case in the 7th Circuit involving similar issues, the Department of Justice applied for relief en banc, and that is also a possibility here, and I seek the relief we adjourn for at least 15 days after the final decision ~~fix~~ of the Court of Appeals either by en banc or a panel or a refusal, that will give us the time to take whatever steps to follow after having the Court of Appeals ruling, and final relief, of course, Your Honor, is a stay of your May 1 order until the Court of Appeals has ruled, or 15 days thereafter.

5-8-75 Transcript of Proceedings on the Government's Motion.

6.

THE COURT: After considering the matter, while I feel that an ex parte application under the circumstances disclosed by counsel might be appropriate, I think it is better practice if notice were given the defendants, in fact under the Federal rules of appellate procedure it seems to me that an application for a stay -- I am not sure whether it is criminal or civil cases -- requires notice, but in any event I think the whole problem can be avoided by giving notice.

I think the matter should be disposed of with dispatch, particularly in view of my own schedule. I am in trial now in a court case. I have got the criminal arraignments and motions Monday and Tuesday. I have a trial panel of jurors coming in Tuesday morning to draw a jury in a civil case. I think under the circumstances I will ask counsel for the Government to prepare an order to show cause seeking the relief mentioned in the ex parte application this morning, or in accordance with the alternate relief. I believe your motion this morning was either for an order to show cause or an ex parte order, although in reading it you were relying on telephonic notification.

MR. WELCH: We're attempting to seek relief

to proceed with whatever notice we could accomplish by 10 o'clock this morning.

THE COURT: But that, of course, would not be pursuant to a court order or an order to show cause, so that if the Government will prepare an order to show cause returnable Tuesday, May 13th, at Auburn at 4:00 p.m., seeking the relief requested in the motion before me now, which should contain a stay of the effective date of the March 11, 1975 and my May 1, 1975 orders for the production of the names of the witnesses. The show cause order should provide for service by mail on the attorneys for the defendants no later than 6:00 p.m. today.

MR. WELCH: Thank, you, Your Honor.

* * * * *

This is to certify that the foregoing record is a true and accurate transcript of the proceedings had at the time and place noted in the heading hereof

Master J. Miller

Official Reporter
Northern District of New York

203
Copy of Order to Show Cause, dated 5-8-75.
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

U. S. DISTRICT COURT
N. D. OF N. Y.
FILED *MM*

UNITED STATES OF AMERICA

MAY 8 - 1975

v.

AT O'CLOCK M.
J. R. SCULLY, Clerk
AUBURN

Criminal No. 74-CR-142

FRANK S. CANNONE, STANLEY A. RAPPUCCI,
THOMAS A. GAETANI, JON N. ENGLISH,
JOSEPH N. MARUCA, VINCENT N. CHRISTINA,
ANTHONY R. SANTACROSE, JR., RAYMOND D. *sc*
MASCIARELLI, JAMES W. MCGRATH, ANDREW
J. QUINLAN and THOMAS J. ABBADESSA.

ORDER TO SHOW CAUSE

UNITED STATES OF AMERICA

Criminal No. 74-CR-144

v.

RAYMOND D. MASCIARELLI and
LAWRENCE SCHULTZ.

TO: REMO A. ALLIO, ESQ.
19 Washington Avenue
Endicott, New York 13760

HAROLD J. BOREANAZ, ESQ.
736 Brisbane Bldg.
Buffalo, N. Y. 14203

MICHAEL J. DeSISTI, ESQ.
101 Hayden Street
Sayre, Penna. 18840

DANTE M. SCACCIA, ESQ.
300 Wilson Bldg.
306 S. Salina Street
Syracuse, N. Y. 13202

JAMES P. SHANAHAN, ESQ.
424 University Bldg.
Syracuse, N. Y. 13202

"I certify that
This is a true copy

Attest: *J. R. Scully*

Clerk, U.S. District Court

By: *Maligard*

Deputy

Upon consideration of the Government's Motion for a Stay
Pending Appeal and other relief brought on before me by Notice
of Motion and supporting Affidavit dated May 7, 1975 and the
record in these cases, you are hereby

ORDERED TO SHOW CAUSE, if any, why the relief sought in
the Government's motion dated May 7, and filed May 8, should
not be granted, at a hearing to be held at 4:00 P.M., Tuesday,
May 13, 1975 at the U. S. Courthouse, Auburn, New York; and
it is

FURTHER ORDERED that this Court's orders of March 11, and

** copies of which were served by mail
on the defendant's attorneys,*

Copy of Order to Show Cause, dated 5-8-75.

May 1, 1975 requiring the disclosure of the names and addresses of the witnesses the government intends to call in its case in chief in these trials be, and hereby are, stayed pending the May 13, 1975 hearing and this Court's determination of the above May 7, motion; and it is

FURTHER ORDERED that service of this Order To Show Cause, by placing it in the first class mail addressed to each of the above-listed attorneys no later than 6:00 P.M. today, May 8, 1975, shall be sufficient notice of said hearing.

SO ORDERED:

EDMUND PORT
EDMUND PORT
United States District Judge

Dated: May 8 1975

Auburn, New York.

5.9.75 Letter filing Certificate of Service by Mail
of Government's Order to Show Cause.

May 9, 1975

Clerk, U. S. District Court
Northern District of New York
Federal Building
Utica, New York 13501

RE: United States v. Masciarelli, et al.,
v. Cannone, et al., #s: 74-CR-144, 142

Attention: Chief Deputy James K. Evans

Dear Jim:

Enclosed for filing, is the Certificate of Service By Mail upon defense attorneys, of the Order to Show Cause, filed in the above-captioned actions at Auburn, N. Y., on May 8, 1975.

It would be appreciated if the enclosed Certificate could be filed with the Order To Show Cause, as a part thereof, by stapling same inside the backer of the order.

Thank you for your cooperation.

Very truly yours,

JAMES M. SULLIVAN, JR.
United States Attorney

Eugene Welch
Assistant U. S. Attorney

EW/van

Encl.

5-9-75 Letter filing Certificate of Service by Mail
to Government's Order to Show Cause.

Form No. USA-20
(Rev. 10-9-58)

CERTIFICATE OF SERVICE BY MAIL

)
STATE OF NEW YORK
) ss.:
COUNTY OF ONONDAGA
)
)

The undersigned hereby certifies that she is an employee in the
Office of the United States Attorney for the Northern District
of New York and is a person of such age and discretion
as to be competent to serve papers.

That on May 8, 1975, she served a copy of the attached

ORDER TO SHOW CAUSE

first class
by placing said copy in a postpaid/envelope addressed to the person(s)
hereinafter named, at the place(s) and address(es) stated below, which
are the last known address(es), and by depositing said envelope and
contents in the United States Mail at Main Post Office, Syracuse, N. Y.,

at 3:45 P.M. REMO A. ALLIO, ESQ. HAROLD J. BOREANAZ, ESQ.
19 Washington Ave. 736 Brisbane Bldg.
Addressee(s): Endicott, N. Y. 13760 Buffalo, N. Y. 14230

MICHAEL J. DESISTI, ESQ. DANTE M. SCACCIA, ESQ.
101 Hayden Street 300 Wilson Bldg.
Sayre, Penna. 18840 306 S. Salina Street
Syracuse, N. Y. 13202 Syracuse, N. Y. 13202

JAMES P. SHANAHAN, ESQ.
424 University Bldg.
Syracuse, N. Y. 13202

Viola A. Myers
VIOLA A. MYERS

Sworn to before me this
8th day of May, 1975

Viola A. Myers
Notary Public

5-9-75 Letter filing Certificate of Service by Mail U. S. DISTRICT COURT
to Government's Order to Show Cause.

FILED *o/m*

MAY 8 - 1975

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

AT O'CLOCK M.
J. R. SCULLY, Clerk
AUBURN

UNITED STATES OF AMERICA

v.

Criminal No. 74-CR-142

FRANK S. CANNONE, STANLEY A. RAPPUCCI,
THOMAS A. GAETANI, JON N. ENGLISH,
JOSEPH N. MARUCA, VINCENT N. CHRISTINA,
ANTHONY R. SANTACROSE, JR., RAYMOND D.
MASCIARELLI, JAMES W. MCGRATH, ANDREW
J. QUINLAN and THOMAS J. ABBADESSA.

ORDER TO SHOW CAUSE

UNITED STATES OF AMERICA

v.

Criminal No. 74-CR-144

RAYMOND D. MASCIARELLI and
LAWRENCE SCHULTZ.

TO: REMO A. ALLIO, ESQ.
19 Washington Avenue
Endicott, New York 13760

"I certify that
This is a true copy

HAROLD J. BOREANAZ, ESQ.
736 Brisbane Bldg.
Buffalo, N. Y. 14203

Attest

MICHAEL J. DeSISTI, ESQ.
101 Hayden Street
Sayre, Penna. 18840

Clerk, U.S. District Court

DANTE M. SCACCIA, ESQ.
300 Wilson Bldg.
306 S. Salina Street
Syracuse, N. Y. 13202

By: *John J. Scully*
Deputy

JAMES P. SHANAHAN, ESQ.
424 University Bldg.
Syracuse, N. Y. 13202

Upon consideration of the Government's Motion for a Stay
Pending Appeal and other relief brought on before me by Notice
of Motion and supporting Affidavit dated May 7, 1975 and the
record in these cases, you are hereby

ORDERED TO SHOW CAUSE, if any, why the relief sought in
the Government's motion dated May 7, and filed May 8, should
not be granted, at a hearing to be held at 4:00 P.M., Tuesday,
May 13, 1975 at the U. S. Courthouse, Auburn, New York; and
it is

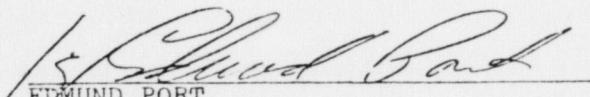
FURTHER ORDERED that this Court's orders of March 11, and
* copies of which were served by mail
on the defendants' attorneys,

5-9-75 Letter filing Certificate of Service by Mail
to Government's Order to Show Cause.

May 1, 1975 requiring the disclosure of the names and addresses of the witnesses the government intends to call in its case in chief in these trials be, and hereby are, stayed pending the May 13, 1975 hearing and this Court's determination of the above May 7, motion; and it is

FURTHER ORDERED that service of this Order To Show Cause, by placing it in the first class mail addressed to each of the above-listed attorneys no later than 6:00 P.M. today, May 8, 1975, shall be sufficient notice of said hearing.

SO ORDERED:


EDMUND PORT
United States District Judge

Dated: May 8 1975

Auburn, New York.

5-10-75 Letter from Attorney Harold J. Boreanaz
to Honorable Edmund Port.

May 10, 1975

Hon. Edmund Port
United States District Judge
United States District Court
Auburn, New York 13021

Re: United States vs. Cannone, et al
Criminal #74-CR-142

Dear Judge Port:

This is to advise you that as Attorney for Frank S. Cannone, Stanley A. Reppucci, Thomas A. Gaetani, Joseph M. Maruca and Thomas J. Abbedessa in the above matter, we have no objection to relief requested by the Government in the Order to Show Cause dated May 8, 1975.

Accordingly, we do not intend to appear on May 13, 1975 at Auburn, New York to oppose the said relief, unless otherwise instructed by you.

Respectfully yours,

BOREANAZ, NE MOYER & BAKER

HJR/bb

HAROLD J. BOREANAZ

cc: Joseph R. Scully, Clerk
Eugene Welch, Asst. United States Attorney
Remo A. Allio, Esquire
Michael J. DeSisti, Esquire
Danton Scaccia, Esquire

5-12-75 Letter from Attorney M. J. DeSisti to
Honorable Edmund Port.

MICHAEL J. DE SISTI
ATTORNEY AT LAW
101 HAYDEN STREET
SAYRE, PENNSYLVANIA 18840

ER5 0207

May 12, 1975

Hon. Edmund Port
United States District Judge
United States District Court
Auburn, N.Y. 13021

Re: United States vs. Cannone, et al
Criminal #74-CR-142

Dear Judge Port:

Confirming our telephone conversation of even date herewith to your office, please be advised that we offer no objection as attorney for Andrew J. Quinlan to the relief requested by the government and the Order to Show Cause dated May 8, 1975.

Under the circumstances we do not intend to appear on May 13, 1975, at Auburn, N.Y. to oppose the said petition unless requested by your Honorable Court.

Respectfully submitted,

M. J. DeSisti

MJD:dh

cc: Hon. Joseph R. Scully, Clerk
United States District Court
Federal Building
Utica, N.Y. 13501

Dante M. Scaccia, Esq.
300 Wilson Building
306 S. Salina Street
Syracuse, N.Y. 13202

Remo A. Allio, Esq.
19 Washington Avenue
Endicott, New York 13760

Harold J. Boreanaz, Esq.
736 Brisbane Building
Buffalo, N.Y. 14203

Eugene Welch
Assistant United States Attorney
Federal Building
P.O. Box 1258
Syracuse, N.Y. 13201

Transcript of Hearing on 5-13-75.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA, :

-against-

74-CR-142

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Transcript of Hearing on 5-13-75.

A P P E A R A N C E S:

HON. JAMES M. SULLIVAN, JR., United States
Attorney for the Northern District of New York,
Federal Building, Syracuse, New York, By: EUGENE
WELCH, ESQ., Assistant United States Attorney,
appearing in behalf of the United states;

- and -

DANTE M. SCACCIA, ESQ., Attorney and Counsellor
at Law, Syracuse, New York, appearing in behalf of
Defendant Masciarelli.

- and -

JAMES P. SHANAHAN, ESQ., Attorney and Counsellor
at Law, Syracuse, New York, appearing in behalf of
Defendant SCHULTZ.

THE CLERK: United States of America against
FRANK S. CANNONE, ET AL, 74-CR-174 and United States
of America against RAYMOND D. MASCIARELLI, ET AL,
74-CR-144.

MR. WELCH: Your Honor - -

THE COURT: Before I hear you, I want Mr.
Scaccia's appearance for whom?

MR. SCACCIA: If it please the Court: in
Criminal 142 I appear for the Defendant Raymond

Transcript of Hearing on 5-13-75.

Masciarelli and James McGrath.

In 74-CR-144 I represent Raymond Masciarelli.

THE COURT: Alright. Now, is there any opposition to this?

MR. SCACCIA: Not by me.

THE COURT: Mr. Welch, briefly tell me what this is all about, and you can make your own record.

MR. WELCH: Do you want Mr. Shanahan, also?

THE COURT: Excuse me. I did not realize that you were in this case.

MR. SHANAHAN: I was assigned two weeks ago to represent Mr. Schultz, and I have received correspondence over the last few weeks and I am here because I have been here most of the day.

THE COURT: Have you been served with this Show Cause Order?

MR. SHANAHAN: Yes, and I have no objection.

THE COURT: I think that the record should show that the Court has received a letter from Mr. M. J. DeSisti on behalf of Andrew J. Quinlan, Defendant, stating that they offer no objection to the relief requested by the Government in the Order to Show Cause, and they did not intend to appear on the return, or pose the petition unless requested by the Court, which the Court has not done.

I received a letter of a similar tenor, in fact I think they are virtually identical, from Harold J. Boreanaz, Attorney for the Defendant Frank S. Cannone, Stanley A. Rappucci, Thomas A. Gaetani, Joseph N. Maruca, and Thomas J. Abbadessa, stating that they have no objection and do not intend to appear unless otherwise instructed by the Court. Of course, this was not done.

Mr. Scaccia has now entered a personal appearance in response to the Show Cause Order on behalf of Raymond Masciarelli, and James McGrath. Mr. Masciarelli in both indictments, and Mr. McGrath in indictment 74-CR-142, and Mr. Shanahan has appeared on behalf of Lawrence Schultz 74-CR-144, and they both stated for the record that they have no objection to the relief requested.

Now, the relief requested is set forth where?

MR. WELCH: It is set forth, your Honor, in our Notice of Motion which was dated May 7th, and in the Wherefore Clause of our Affidavit in support of the motions which Affidavit is dated May 7th. 1975.

The relief sought is in three sections, your Honor: the first section is now moot. That was leave to proceed in the ex-party matter, or on short Notice.

Transcript of Hearing on 5-13-75.

THE COURT: So that the relief being sought is adjourning the trials in the above-captioned indictments at least 15 days from the date of the final rulings by the United States Court of Appeals for the Second Circuit on the Government's appeal from the May 1, 1975 order of this Court, and for such further period of time as the Court may authorize, and staying the March 11th, 1975, and the May 1, 1975 orders signed by me, I assume?

MR. WELCH: Yes, your Honor.

THE COURT: Requiring pre-trial disclosure of the Government's witnesses by May 9th.

Alright, the Government may submit an order in accordance with the relief requested.

No objections having been filed by any attorney for any of the defendants.

MR. WELCH: There is one thing that I should like to go on the record at this time.

In going over the materials in preparation for coming here this afternoon, your Honor, I noted that on January 13th, 1975, a transcript of that initial discovery hearing I asked the Court as follows: I would request that your Honor, if he would inquire of Mr. Allio, on the day of arraignment who he represented, and he indicated that he was

Transcript of Hearing on 5-13-75.

representing Mr. Jon English for the purpose of arraignment. Obviously there was no motion or any indication of anyone representing Mr. English since that day. I don't know if it is just an oversite with Mr. Allio, or if that means that he is not representing him.

Mr. Allio was then quoted as responding: "I was under the impression that Mr. English might have been represented by an Attorney known as Mr. Joe Scelsie in our area. I received a communication from Mr. Scelsie to that effect. Now, whether he actually is or not, I cannot say absolutely."

The Court then said: "You have not been relieved, have you?"

Mr. Allio's response was: "No I have not been relieved."

The Counsel then said: "So that you are presently in the posture of the defendant who hasn't made motions, is that all?"

Mr. Allio responds: "Yes."

The Court said: "alright."

If your Honor please, I have heard nothing since that date from anyone representing Mr. English other than that from Mr. Allio.

I would like to indicate on the record that any

rulings that your Honor makes in that regard, of adjourning the trial, as to Mr. English would apply to Mr. English, even though there has been no appearance by counsel here?

THE COURT: Alright. Insofar as the record appears, insofar as Mr. Allio's obligations are concerned, he has not sought to be relieved from his representation and I think that he should be advised that he should make - - if he intends not to represent Mr. English, that he should make a formal application of the Court to be relieved of that representation on notice to Mr. English.

MR. WELCH: I did do, your Honor, one further thing in this regard. I did call earlier this morning Mr. Scelsie, who was not in, and I called him back just moments before coming into Court to find out if, in fact, he was going to represent Mr. English, and Mr. Scelsie said at this point he does not represent him, but expects he will. I asked him to officially enter his appearance here, and he said that he would.

THE COURT: Well if he does it will be a pro forma matter of relieving Mr. Allio, or they could justify a substitution of attorneys.

The record now stands that Mr. Allio represents

Mr. English, and has not been relieved of the assignment. I think that he should be advised of that because he may feel that he is at liberty to represent him and not represent him at will.

MR. WELCH: That is what I thought on that January 13th inquiry when you asked him if he had been relieved, and he said "no."

THE COURT: That is what I intended to do, and I think that the language is quite clear.

MR. WELCH: My only concern is that your Honor's order here today will apply to Mr. English, as well.

THE COURT: It applies to everyone.

MR. WELCH: Thank you, your Honor.

MR. SCACCIA: If it please the Court, that raises a question that occurred to me because of this confusion. I received a copy of the letter that your Honor made reference to, earlier from Mr. Boreanaz and Mr. DeSisti, and I may be missing a line, as it were, but it doesn't seem that anyone is expressly stating that he is representing Vincent Christina, and as I recall it was a - -

THE COURT: Well, they may not.

MR. WELCH: Mr. Allio indicated that he was representing Mr. Christina, and any motions he made he made them on behalf of Mr. Cristina.

Transcript of Hearing on 5-13-75.

MR. SCACCIA: Did he?

MR. WELCH: And he has not noted any objection to this Show Cause Order.

MR. SCACCIA: If that is the case, that takes care of that. I did not recall that.

THE COURT: I don't know if they have all responded. Some defendants may have or their counsel may have just not responded to the Show Cause Order. Maybe they feel they were not objecting and they were not going to respond.

MR. SCACCIA: I think there was a reference to Mr. Boreanz taking over a group of defendants from Mr. Allio, and I don't know who it was.

THE COURT: The record will have to speak for itself.

MR. WELCH: Mr. Allio has indicated that he is still representing Mr. Christina, which leaves Mr. Allio representing two defendants, Mr. Santacrose and Mr. Christina.

THE COURT: I remember asking about a possible conflict, and everybody seemed not to envision any kind of a conflict, or their attorneys.

Alright, submit an order.

MR. WELCH: Thank you.

THE CLERK: Court stands in recess until

10 o'clock tomorrow morning.

(after a short recess the following took place.)

TH THE COURT: I have asked everyone to return and I will put some more on the record in this matter.

I understand that these two indictments are on the trial calendar for May 30th?

MR. WELCH: Yes, your Honor, on the calendar for May 30th, to fix trial dates on or after June second.

THE COURT: In view of the order that has just been granted, of course, that makes the scheduling on May 30th academic, does it not?

MR. WELCH: That is right.

THE COURT: Is there any objection to removing the case from the calendar?

MR. SCACCIA: None, on behalf of my client.

MR. SHANAHAN: I was given until, I think, May 28th, to make motions in regard to the indictment. That is 144.

THE COURT: Well now, your motions I think I could dispose of right now. I will direct the Government to supply you with all of the material that they have been directed to supply to the other defendants and that covers the names and

addresses of witness and that portion which is subject to the stay just granted.

MR. SHANAHAN: Thank you, your Honor.

THE COURT: And that should be supplied -- how long? Of course there is no great urgency on this now.

MR. WELCH: Well, the big item, your Honor, is the tape recordings.

THE COURT: Alright, Mr. Shanahan should be provided with all this relief that was granted to all of the other defendants, and if there is any question about this not being made available timely further pleadings can be made to the Court.

MR. WELCH: Thank you, Your Honor.

THE COURT: I don't think there will be any problem.

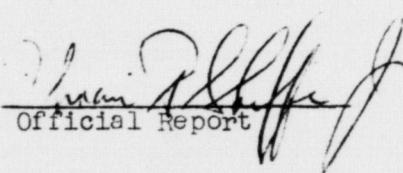
That is all.

(Whereupon the above-entitled matter was adjourned.)

RE P O R T E R ' S C E R T I F I C A T I O N

I, Hiram F. Sheffer, Jr., Official
Court Reporter for the United States District Court
do certify the foregoing to be a true and accurate
transcription of the stenographic minutes as taken
by me during the aforesaid proceedings.

Albany, New York.


Official Report

**5-15-75 Order of Honorable Edmund Port,
Granting Stay Pending Appeal.**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.
FRANK S. CANNONE, STANLEY A. RAPPUCCI, THOMAS A.
GAETANI, JON N. ENGLISH, JOSEPH N. MARUCA,
VINCENT N. CHRISTINA, ANTHONY R. SANTACROSE, JR.,
RAYMOND D. MASCIARELLI, JAMES W. MCGRATH,
ANDREW J. QUINLAN and THOMAS J. ABBADESSA.

Criminal No. 74-CR-142 U.S. DISTRICT COURT
N.D. of N.Y.
FILED
May 19, 1975

ORDER J. R. SCULLY, CLERK
UTICA

UNITED STATES OF AMERICA

v.
RAYMOND D. MASCIARELLI and LAWRENCE SCHULTZ.

Criminal No.
74-CR-144

Upon consideration of the May 7, 1975 Notice of Motion and supporting affidavit of the Government in these cases and no objection to the relief sought in that motion having been made by any defense counsel at a hearing scheduled for that purpose on May 13, 1975 pursuant to this Court's Show Cause Order dated May 8, 1975, it is by the Court

ORDERED that all trials in these matters be and they hereby are adjourned until at least fifteen days from the date of a final ruling by the United States Court of Appeals for the Second Circuit on the government's appeal from the May 1, 1975 order of this Court, or until such further period of time as may be ordered by this Court, or the United States Court of Appeals for the Second Circuit, and it is

FURTHER ORDERED that the effective date of this Court's March 11, 1975 and May 1, 1975 orders requiring pre-trial disclosure of the government's witnesses by May 9, 1975 is hereby stayed for the same period of time, and it is

FURTHER ORDERED that the above-captioned matters are hereby removed from the trial calendar to be called on May 30, 1975 and will remain off of the trial calendars for this District until restored in accordance with the above-ordered adjournment.

SO ORDERED

/s/ EDMUND PORT

EDMUND PORT
United States District Court Judge

Dated: Auburn, N. Y.

May 15, 1975